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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

Periodic reports of States parties due in 1999

SPAIN*

[1 June 1999]

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* For the initial report submitted by Spain, see document CRC/C/8/Add.6; for its consideration by the Committee on 6 and 7 October 1994, see documents CRC/C/SR.171, 172 and 173 and document CRC/C/15/Add.28. The annexes to the present report may be consulted in the secretariat of the Committee.

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INTRODUCTION

A. The regulatory and institutional framework of the second report

1. The regulatory framework

1. Pursuant to article 44, paragraph 1, of the 1989 Convention on the Rights of the Child, Spain submitted in 1993 its initial report on the implementation of the Convention, which had entered into force on 6 January 1991.

2. The Committee on the Rights of the Child considered this initial report (CRC/C/8/Add.6) during its seventh session at its 171st, 172nd and 173rd meetings, held on 6 and 7 October 1994, and made some concluding observations (CRC/C/15/Add.28). These observations included some suggestions and recommendations. Spain responded to the recommendations in a document produced in April 1996.

3. Both the initial report and the Committee's recommendations were published in 1996 by the Ministry of Labour and Social Affairs.

4. In accordance with its commitment under article 44, paragraph 1, of the Convention, Spain now presents, five years later, its second report.

5. In the preparation and drafting of the second report Spain followed the general guidelines (CRC/C/58) adopted by the Committee on the Rights of the Child at its 343rd meeting.

2. The institutions responsible for preparing the second report

6. The responsibility for drafting the second report was assigned to the Office for Social Action, Children and the Family of the Secretariat for Social Affairs of the Ministry of Labour and Social Affairs.

7. Pursuant to Royal Decree 1888/1996 of 2 August 1996, which established the fundamental structure of the Ministry of Labour and Social Affairs, the functions of this Office include the analysis, preparation, coordination and monitoring of action programmes for the protection and advancement of children and the family and for the prevention of the social problems which may affect them, as well as the analysis and monitoring of the application of the legislation on the protection and advancement of children and the family.

8. The Office planned the preparation process, established appropriate coordination arrangements for collecting information from the sources, created a database for organizing the information, and drafted the report.

B. The second report in the context of Spain's policies for children in the 1980s and 1990s

9. Although the second report does indeed describe the situation of children over the past five years, from 1993 to 1997 inclusively, it is set in the context of the policies for children which began to be systematically organized and developed in the 1980s, policies already described in the initial report.

10. Material for the second report was accepted up to February 1999, so that it includes information on changes made in the regulations and on political and administrative measures introduced in 1998.

Thus, the information provided jointly by the initial and second reports offers a fairly complete picture of the evolution of Spain's policies for children in the 1980s and 1990s.

I. Policies for children in the 1990s

11. The main features of these policies, at least as far as the period 1990-1996 is concerned, were set out in Spain's National Programme of Action for Children in the 1990s submitted to UNICEF in 1996 in compliance with the commitment undertaken at the World Summit for Children held on 29 and 30 December 1990.

12. The Summit endorsed the Convention on the Rights of the Child, adopted by the General Assembly on 20 November 1990, thus becoming the first world assembly to advocate the Convention's ratification and implementation.

13. For the year 2000 and beyond and with a view to securing the maximum priority for children and their welfare, the Summit adopted a World Declaration and Plan of Action which Spain signed and thus committed itself to this cause.

14. In paragraph 34 (i) of this Plan of Action all Governments are urged to prepare national programmes of action to implement the commitments undertaken. An advance copy of Spain's National Programme of Action for Children had already been submitted to the United Nations in 1992.

15. Features of this Programme of Action related to the situation of children and to the policies, strategies and measures covered by the second report are described below.

(a) Changed attitudes to children

16. As already mentioned in the initial report, in the latter part of the 1970s, in the 1980s and in the early years of the 1990s Spain underwent profound political and socio-cultural changes which caused a substantial transformation of life in society and in the way institutions were structured and functioned.

17. The role and place of children in Spanish society and their relations with adults were also transformed during this period.

18. At the same time, similar changes have been transforming adults' experience of children, the nature of their parental and educational functions and responsibilities in the socialization process, the interactions inherent in the common spaces of shared family life, the position of institutions with regard to the rights and needs of children, and the social representations of the role, position, needs and rights of children in society.

(b) Children as holders of rights

19. In this climate of change the role of children in Spanish society has taken on new dimensions, and children have become an object of attention and study as never before. This greater social visibility has prompted discussion of children and has enhanced awareness of them among the public at large and among professionals, institutions, the communication media and social organizations.

20. In their social representations children have become accepted as a social category with specific needs and as members of society with the capacity to intervene actively in their own development and environment and to alter them. There is also a growing consensus to regard children as holders of human and other rights ranging from protection to independence which they are competent to exercise,

save only for the limitations imposed by their age. There is no great difference between the requirements of protection and the requirements of independence, and in fact the best way of ensuring the social and legal protection of children is to promote their independence as holders of rights.

(c) Children as a political priority

21. Awareness itself is an insufficient condition for changing the existing situation and attitudes and ways of communicating with children or the adverse conditions, risk factors, needs and problems that affect them. It is also necessary to spell out the existing policies for children, recognize the impact on children of the various sectoral policies, encourage the coordination of these policies, speed up the policies and strategies under preparation, and promote other new ones which respond to the needs and rights of children and enhance their welfare and quality of life.

22. As will be seen throughout this second report, children have in fact occupied an important place in the development of the policies of the General Administration of the State and of the Autonomous Communities, in the development of law and in the strategies and programmes of social organizations, especially with respect to children in situations of social difficulty and children lacking protection.

(d) The intersectoral approach in policies for children

23. This approach derives from an awareness that children's growth and development and their relations with adults in the socialization process take place within a context of interaction with the social environment and that the scenarios which affect children's socialization and development are many and varied but have broad areas in common.

24. It is important to adopt an intersectoral approach in order to be able to mobilize the resources, opportunities and means of protection existing in the different contexts and to reduce the defects and the adverse and risk factors which impair children's growth, development and learning.

25. Although it cannot be said that a general intersectoral framework for policies for children has existed within the Administration over the past two decades, in certain areas separate sectors have come together to carry out specific measures.

26. The problems of maltreatment of children have been tackled in many of the Autonomous Communities and municipal administrations, and there has often been coordinated action by the social, education and health services.

27. NGOs and professional associations have played and continue to play a key role through their work for children under programmes addressing issues common to several social sectors at the same time.

28. The institutions providing social protection for children and the judicial authorities have also made considerable progress in the formulation of joint measures. The health and education departments of many of the Autonomous Communities have established joint working plans to provide assistance and preventive measures and treatment for children suffering from AIDS and to encourage healthy behaviour and life styles by means of health-education programmes.

29. Several NGOs, as will be seen later in the report, run combined health and education programmes for children confined to hospital by long-term illnesses.

30. Obviously, introducing an intersectoral approach is not the same thing as achieving intersectoral action. Such action is not something given in advance but a continuous commitment and task. The second report highlights the efforts made and the difficulties encountered in trying to secure authentically intersectoral policies and measures for children.

(e) The areas covered in the National Programme of Action for Children

31. The policies for children set out in Spain's National Programme have several axes or areas which are delineated in one way or another in the second report:

(a) The protection and promotion of the rights of the child as an institutional commitment:

  (i) The initial report described at length the influence of Spain's 1978 Constitution in the emergence of a new concept of the rights of the child and their protection;

  (ii) There is no doubt that the ratification of the Convention provided a stimulus for society at large and for institutions in the protection of children's rights;

  (iii) In its ruling of 14 February 1991 in favour of legal guarantees in proceedings involving juvenile offenders the Constitutional Court based its arguments on the guarantees established in the Convention;

  (iv) Organizational Act 4/1992 of 5 June amending the Act on the jurisdiction and procedures of the juvenile courts, Organizational Act 1/1996 of 15 January on the legal protection of minors and partial amendment of the Civil Code and the Civil Proceedings Act (hereinafter referred to as "the Protection of Minors Act"), and the consideration by Parliament of the draft organizational act on the criminal responsibility of minors are also connected with the protection and promotion of the rights of the child;

  (v) The children's acts promulgated by the Autonomous Communities over the past decade make constant references to the principles of the Convention;

  (vi) The right to participate established in several articles of the Convention has received special attention. One important mark of this interest was the conference which the Ministry of Social Affairs held in Madrid in December 1994 in collaboration with the Council of Europe precisely on "Evolution of the role of children in family life: participation and negotiation".

(b) Education:

  (i) As pointed out in the initial report, the General Education (Organization) Act (1/1990 of 3 October) included among its stated objectives the extension of basic education up to age 16 on a free and compulsory basis, as well as the reorganization of the education system itself, including the establishment in the general scheme of the stages of education: infant (0-6 years); primary (6-12); and compulsory secondary (12-16);

  (ii) Other areas in which progress has been made towards guaranteeing equal opportunities and quality include the education of children with special needs in accordance with the principles of integration, educational guidance, and correction of the inequalities caused by socio-economic, geographical and ethnic factors;

(iii) Cross-curricular teaching and education in values are found in all subjects and are taken into account in timetabling, the teaching work itself, and extra-curricular activities.

(c) Health:

(i) Article 43 of the Constitution establishes the right of all citizens to have their health protected and it recognizes, from an intersectoral standpoint, the need to create certain socio-economic conditions to make it possible for citizens to exercise this right. This is also the approach taken in the General Health Act (14/1986). The health plan produced by the Ministry of Health and Consumer Affairs addresses public health matters and contains objectives and strategies having an impact on the quality of life of children and their families;

(ii) The maternal and child health programme, approved by a plenary meeting of the Inter-territorial Health Council in June 1990, is based on the principles mentioned above and on the guarantee of equity. The measures which it introduces have a clear impact on the comprehensive and universal care of children, for they range from the conditions of childbirth as part of pregnancy, delivery and puerperium care to the conditions of children's development as part of their supervision and monitoring up to age 14, which entails the extension of paediatric care up to that age. The programme also addresses the control of deaths and diseases by preventing defects and disabilities and accidents and by tackling transmissible diseases under the vaccinations schedule applicable to the whole child population.

(d) Social services for children with social problems:

(i) Spain's System of Social Care for Children, described later in this Introduction, has evolved over the past two decades from an approach based on charity and shelter, which survived until the 1970s, to the creation of the modern system of social protection of children under Act 21/1987, which amended parts of the Civil Code and the Civil Proceedings Act;

(ii) The 1966 Protection of Minors Act, which will be discussed in section B of this Introduction and in several other places in the report, has led to significant progress in this area and will have a leading role to play in the development of policies for children in the immediate future.

(e) Family life and relations:

(i) The family is regarded as a space for socialization and happy coexistence which has to be converted, in the words of the motto of the International Year of the Family held in 1994, into "the smallest democracy at the heart of society", a place where children learn values and behaviour that enable them to assert their rights and live together in a society based on tolerance and respect for the rights of others;

(ii) Studies of the Spanish family produced in recent years emphasize that this institution has undergone a remarkable change both in its structure and in its internal dynamics. The new role of women in society, the democratization of relations within the family, and the enhanced advocacy for children and adolescents have been decisive factors in this change. There are now new models for fathers and mothers, new approaches to raising children, and new values of gender equality affecting the distribution of responsibilities within and outside the family.

(f) Socialization in leisure time: The Programme of Action gives specific attention to children's relations with the environment, urban spaces and streets, consumption and the communication media.

(g) International cooperation:

(i) Spain has been furnishing development assistance for little more than 10 years. Up to 1977 it was a recipient of development aid. By 1981, although already carrying out assistance activities, Spain still appeared in World Bank statistics as a developing country;

(ii) Over this very short period Spain succeeded in increasing its official development assistance (ODA) from 0.04 per cent of GNP in 1983 to 0.26 per cent in 1994. As a result of an additional extraordinary effort, in 1995 its ODA will have been between 0.35 and 0.50 per cent of GNP, depending on the quality of the projects to be implemented. In monetary terms, 0.50 per cent means over 300,000 million pesetas.

2. The System of Social Care for Children

32. The policies for children in Spain in the present decade, the general framework of which was described in the preceding section, are carried out, in the sector concerned with the social protection of children, through the System of Social Care for Children (SASI), which began to take shape in the 1980s by coordinating the responsibilities which the Autonomous Communities were starting to exercise in the design and introduction of child-protection policies.

(a) A brief historical note

33. Spain has a long history of addressing the protection of children by means of isolated initiatives. In the nineteenth century there was already genuine State legislation on this question. In 1876, for example, a Royal Decree was issued on the creation of kindergartens. In 1878 the appearance of children aged under 16 years in public performances constituting a physical risk was made an offence. A 1900 act regulated working conditions for women and children and a further act, in 1903, prohibited begging.

34. However, the protection of children was first institutionalized in an act of 12 August 1904. This legislation was extended, with some amendments, by a decree of 2 July 1948 approving a revised text of the legislation on the protection of minors and by a decree of 11 June 1948 approving a revised text of the legislation on juvenile guardianship courts. The protection of children was entrusted in these 1948 decrees to the Office for the Protection of Children (Obra de Protección de Menores), which had legal personality and an independent operating budget.

35. This system was based on a philosophy of charitable assistance and combined protection with the correction of juvenile offenders without making a proper distinction between situations in which children lacked protection and those in which they had committed unlawful acts.

36. The criteria governing the work of protecting children in this regulatory and institutional framework encouraged recourse to placement in institutions in preference to other measures. This led to the establishment of big facilities where children requiring protection sometimes lived side by side with children requiring correction; these facilities were not always located in the places where they were needed by the target population. Children receiving protection were regarded as persons isolated from their families and society, with the result that the measures taken for each individual child did not take any great account of the possible repercussions on his home environment.

(b) The Spanish Constitution and Act 21/1987

37. As discussed in the initial report, the establishment of a State based on the rule of law and the promulgation of the 1978 Constitution meant the introduction of new approaches, including a new conception of the rights of the child, the structure of the family, and people's various responsibilities towards children.

38. Following the adoption of the 1978 Constitution the organization and structure of Spain's Administration underwent a series of major changes which also affected the protection of children.

39. In addition, the Constitution recognized the right of citizens to access to social services when necessary and their consequent right to improved charitable and social assistance services; this led to the recognition of public responsibility for the safeguard of this right.

40. The publication of Act 21/1987 of 11 November, which amended certain articles of the Civil Code and the Civil Proceedings Act, as already discussed at length in the initial report, entailed, rather than merely a change in family law, the beginning of a modern system for the protection of children.

41. A fundamental feature of this reform was the termination of the involvement of the courts in the first stages of the protection process: in other words, the protection of children was brought within the jurisdiction of the public social services in the Autonomous Communities, which made a tremendous effort to adapt to the requirements of exclusive competence in juvenile matters which until then had been the responsibility of the General Administration of the State.

42. The new legislation introduced in the Autonomous Communities to regulate the protection of children in their territory, broadly based on Act 21/1987, emphasized the new conception of children as holders of rights who sometimes required special protection in their most immediate environment - the family.

(c) Stages of the system of social protection

43. There have been three stages in the most recent development of the system:

44. The first stage was charitable assistance: up to the end of the 1970s the social protection of children, as we have seen, took an approach based on charity and shelter which originated in the Office for the Protection of Minors.

45. The political changes at the end of the 1970s laid the foundations for the stage. In 1979 the first democratic municipal elections since the Civil War were decisive in adapting the political and

administrative institutions to the needs of the citizens. The 1980s saw the big changes which prefigured the present system for the social care of children in social difficulties. These changes affected both values and regulatory systems and the service facilities and networks.

46. The powerful impetus created by Act 21/1987, described in detail in the initial report, contributed to the creation of the first modern system for the social protection of children. From the early days the improvement of the new arrangements introduced in the system was a constant and shared concern of the Autonomous Communities and the then Ministry of Social Affairs in their everyday political and technical contacts; that remains the case today.

47. In accordance with their individual Statutes of Autonomy, the Communities have regulated the care of children in situations of social difficulty in their respective social services acts and in other specific legislation on children, as will be seen in chapter I and throughout this report. These acts state and regulate, with greater or lesser length and detail, the premises of the protection of children and the family, the establishment, organization and functions of the institutions and establishments for the protection and guardianship of children, and in some cases the express protection of the specific rights of children within the respective geographical jurisdictions.

48. Within this regulatory framework each Autonomous Community has established its own System of Social Care for Children (SASI) with an administrative structure suited to the territory in question. Each autonomous SASI consists of a coordinated structure of social services with two levels corresponding to the two levels of the Public System of Social Services (to be discussed later):

(a) First level: social services providing primary or local care;

(b) Second level: regional services for the care of children in social difficulties, specialized individual, community, day or residential care services, including diagnosis, treatment, support and rehabilitation, together with the bodies which, in some cases, exist for the purpose of official guardianship.

49. The third stage, which was fully established in the early 1990s, is concerned with projects to secure the improvement of the system introduced in the 1980s by means of permanent technical cooperation between the General Administration of the State and the Autonomous Communities.

50. In this third stage the 1996 Protection of Minors Act, to which extensive reference will be made throughout this report, completes the process of consolidating the SASI and responds to the new needs revealed by the application of Act 21/1987.

(d) The SASI and the question of maltreatment

51. In step with the development of the SASI the risk factors in general and maltreatment in particular have also been acquiring an increasing and decisive relevance in social policies for children. Apart from some approaches to the subject by paediatricians and the social services, this phenomenon was not recognized to be a social problem until very recently, but at the end of the 1980s the acknowledgement and study of maltreatment as such a problem became more widespread and manifest, coinciding with the social and political changes referred to earlier. The establishment of a working group linked to the Interministerial Commission on Youth led to the publication of the findings of Spain's first extensive study of the maltreatment of children. The first professional associations for its prevention appeared at the same time.

52. In the framework of policies for children which provides the context of this second report the consideration of maltreatment as an attack on the rights that the Convention accords to children is based on the following premises:

(a) The maltreatment of children is regarded as a cultural and psycho-social problem;

(b) Children's status as citizens entails the full attention of the political, technical and professional officials responsible for safeguarding the rights of the child;

(c) Either directly or indirectly maltreatment is an issue for the public at large, the social welfare and protection systems, and the professionals;

(d) It is necessary to have sufficient resources and knowledge to be able to offer the measures which institutions and professionals may require for preventing and dealing with maltreatment;

(e) It is necessary to promote the dissemination and acceptance of the rights set out in the Convention in the areas closest to children and to facilitate their recognition and exercise;

(f) It is necessary to encourage professionals to intervene in ways that rely more heavily on educational and psycho-social measures in order to re-establish family relations and bonds, when this is possible, rather than on other kinds of measure of a punitive nature involving the separation of the maltreated child from his biological family;

(g) The social services can be an important resource for intervention in cases of maltreatment, but their main role may lie in the implementation of prevention policies. Although the situation of many families requires recourse to intervention measures, there is no doubt that prevention must play a bigger part;

(h) Three levels of action must be considered in the prevention of maltreatment: individual or family; social services; and cultural beliefs and values. The best preventive measure without any doubt is acceptance of the rights of the child as an individual in all areas of social life.

3. The protection of children under the Public System of Social Services

53. The System of Social Care for Children (SASI), which is one of the key components of the general policies for the protection and promotion of the rights of the child, may be regarded as integrated in the Public System of Social Services. This Public System consists of an array of services and benefits provided by the General Administration of the State, the Autonomous Communities and the local corporations which are intended to secure the advancement and development of individuals and groups with a view to enhancing their social well-being and their quality of life, meeting their social needs in full, ensuring the exercise of their rights and guaranteeing equality, as well as preventing and eliminating the causes of social exclusion and marginalization.

54. The System's regulatory framework is contained in:

(a) The Constitution, articles 41, 139.1 and 149.1 of which guarantee a public social security scheme for all citizens providing sufficient social assistance and benefits in situations of need;

(b) Pursuant to article 148.1.20 of the Constitution and the Statute of Autonomy of each Autonomous Community, the autonomous social services acts establish an entitlement to social services for all Spaniards residing in the territory in question, set out the principles, measures and social benefits, and establish a network of facilities and services with primary and secondary levels of care which constitute the social services throughout the national territory. Children and young people are mentioned in the acts as recipients of these social services. The primary level of care includes four basic services: information and counselling; assistance in the home; alternative housing; and prevention and social integration activities;

(c) Act 7/1985 of 2 April, which sets out the basic principles of the local systems, provides that the municipalities have competence to provide the basic social service benefits; this provision is binding on municipalities with more that 20,000 inhabitants.

55. The Concerted Plan for the Development of Basic Social Services of Local Corporations, referred to in paragraph 39 of the initial report, finances the development of basic services by the corporations under agreements between the Ministry of Labour and Social Affairs and the Autonomous Communities; the recipients of the benefits include children and families in situations of difficulty or risk.

4. The second report in the context of systems of information on children

56. Obviously, the drafting of the report depended on the information available, in more or less organized form, about the policies, strategies and activities affecting children. At the same time this exercise provided an opportunity for both the agencies of the General Administration of the State and the autonomous administrations and NGOs to restate the evidence of the need for a coordinated system of information on the situation of children in Spain.

57. One of the recommendations made to the Spanish Government by the Committee on the Rights of the Child in connection with its consideration of the initial report was that it should "gather all the necessary information in order to have an overall view of the situation in the country and to ensure a comprehensive and multidisciplinary evaluation of progress and difficulties in implementing the Convention".

58. To this end Spain began to develop at the beginning of the 1990s an information system consisting of two components, which at present are independent of each other and at unequal stages of advancement, although in the medium term they are to form a single system of information about children in Spain. In addition to these two mechanisms for collecting specific information about children, the community social services gather information at the municipal level about the users of the services, who obviously include children and their families.

(a) The Data Bank on the Protection of Children

59. The Data Bank on the Protection of Children is an information system which currently gathers systematic and periodic secondary data on the protection measures for children for the whole country, broken down for the 17 Autonomous Communities and the autonomous cities of Ceuta and Melilla, in accordance with the protection measures established initially in Act 21/1987 and subsequently in the Protection of Minors Act.

60. The sources of the information are the competent authorities of the 17 Communities and Ceuta and Melilla. The information is collected every six months for analysis before being presented and disseminated in an annual statistical bulletin.

61. The information categories used in the bulletin were established by consensus among the Autonomous Communities, so that the content of the information collected is now standardized.

62. The information contained in this Data Bank is discussed in chapter V, and annex A includes the corresponding tables and graphs.

(b) The Children's Watch

63. The drafting of the initial report, the gradual development of the Data Bank on the Protection of Children, and the information needs arising during the drafting of the second report highlighted the necessity of establishing a coordinated integrated, centralized and common system of information about children for the whole country in order to facilitate the monitoring of the situation of children and their needs and problems, the public policies for children, and the implementation of the Convention. This system is to provide guidance for policy design and make it possible for reliable information to be shared by the various administrations and social organizations.

64. The Children's Watch project now taking shape in the Ministry of Labour and Social Affairs is an attempt to create such a system; it is justified amongst other grounds by the commitments undertaken by the State when it ratified the Convention and by the recommendations made by the Committee following the initial report.

65. The Children's Watch is defined therefore as a centralized and shared system of information capable of supervising and monitoring children's well-being and quality of life and the public policies affecting their development, as well as monitoring the introduction of these policies and their effects on children.

66. The system is centralized in that it organizes the information on children at a central point, and it is shared in that the information is contributed jointly by the various public administrations and agencies concerned with the well-being of children.

67. The Watch has the following aims:

(a) To determine the situation and quality of life of children and the changes occurring therein;

(b) To monitor social policies affecting children;

(c) To make recommendations on public policies affecting children;

(d) To stimulate research and studies on children;

(e) To produce periodic reports contributing to knowledge about children.

68. The Watch is to be established in stages over the longer term and will be subject to continuous evaluation.

69. At present, work is still proceeding on the initial stage of setting up the project: an operational logistical group is being created; the Watch will be provided with a suitable regulatory framework; the scope and sources of the information will be identified; basic protocols for the collection of the information will be agreed by consensus; a centralized common database will be designed and set up; agreements on the provision of information will be made with the sources; and a start will be made on the gathering of basic data and on the conduct of research and studies on children.

70. The database on children has now been established and will be described later; information from the sources which have taken part in the preparation of this report has been entered in the database.

(c) System of information on users of the social services

71. Within the framework of the Concerted Plan for the Development of Basic Social Services of Local Corporations, mentioned above, a system of information on users is being set up in the community social services of the municipalities of the Autonomous Communities. This is a computerized programme for development of the Social Card. This Card is a documentary aid for the collection of basic data on users of the social services, which is needed for the purposes of professional responses to social demands. The Card is based on family records and helps local social workers to manage these records.

72. The system has the following aims:

(a) To produce information on users of the social services which is common to the whole State and employs standard criteria and indicators for all the Autonomous Communities;

(b) To develop mechanisms for evaluating the social services.

73. The system provides information about the profile of users of the social services and social data on families, as well as information about housing and social measures (demand, appraisal, suitable measures, measures taken), for use in social diagnoses, the evaluation of the social services system, and the conduct of statistical operations for specific purposes, with respect in particular to the population aged 8-16 years.

74. The system's production process begins in the social work units, which collect the information from the Social Card, and continues in the social services centres, which receive the data from the units, in the Autonomous Communities, which receive the data from the centres, and in the Office for Social Action, Children and the Family of the Ministry of Labour and Social Affairs, which receives the data from all the Autonomous Communities and proceeds to organize the information and statistics for the whole country.

C. The future of policies for children in Spain

75. The preparation of this report in collaboration with the Autonomous Communities and children's organizations provided an opportunity for initiating a process of analysis and a debate on the progress made in the development of the social protection of children in Spain over the past two decades and on past and continuing difficulties, as well as an opportunity for adjustment and re-adjustment of the aims for the future.

1. The progress made

76. The second report contains comprehensive information about the measures taken by the General Administration of the State, the autonomous and local authorities, and social organizations to promote policies for the protection and advancement of the rights of the child over the past five years and for the whole of the 1990s, on the foundations laid in the 1980s.

77. The balance sheet of the past 20 years shows a long road travelled and important changes in public policies and social organizations in education, health, the social care of children, and the development of law.

(a) Implementation of the Convention through legislation

78. The establishment of a State governed by the rule of law by the promulgation of the 1978 Constitution opened the way for a series of major changes which affected the protection of children, especially with respect to civil and criminal law.

79. There now exists a large body of law constituting the juridical foundation of the regulation of the rights of the child and the protection of children in accordance with the Convention.

80. The right to education was recognised in legislation predating the ratification of the Convention: the 1985 Right to Education (Organization) Act and the 1990 General Education (Organization) Act. The right to health was recognized in the General Health Act of 1986.

81. Organizational Act 4/1992 of 5 June amending the Act on the jurisdiction and procedures of the juvenile courts contains the safeguards of the rights which the Convention accords to juvenile offenders.

82. The 1996 Protection of Minors Act supplements and updates the reform of the legislation on children initiated by Act 21/1987.

83. According to the explanatory introduction to the Projection of Minors Act, the new approach to children's rights reorganizes the structure of the protection accorded to minors and entails full recognition of them as holders of rights and of their effective capacity to exercise their rights.

84. Article 3 provides that minors enjoy the rights accorded to them under the international treaties to which Spain is a party and in particular the Convention on the Rights of the Child, which provides the framework for the interpretation of the Act.

85. Chapter II of the Act refers explicitly to the right to respect, privacy and one's own self-image, the right to education, the right to freedom of belief, the right to freedom of expression, and the right to be heard, all of which are rights confirmed in the Convention.

86. The Act accords the right to education to foreign children living in Spain. It likewise accords the right to health care to children at risk or in need of protection.

87. Since the Convention forms part of Spanish law, as pointed out earlier, individuals may invoke the rights contained in the Convention directly before Spanish courts.

88. Policies for children have received special attention in the Autonomous Communities. One example of this attention is the extensive development of law to take into account recent social, institutional and professional experience in caring for children and attending to their needs and rights.

89. The first stage, in which all the Autonomous Communities acquired their own social services acts, which are generally limited to administrative matters connected with children in need of protection (guardianship bodies, regulations on residential institutions, etc.), was followed by a second stage in which various specific rules having the status of legislative acts were promulgated; these rules bring all minors within their scope and focus the actions of public authorities on promoting the free development of children's personalities.

90. Some of this legislation states explicitly the obligation to respect and ensure the exercise of the rights established in the Convention.

(b) Implementation of the Convention in social policies

91. The drafting of the National Programme of Action for Children, referred to earlier, and the consolidation of the System of Social Care for Children (SASI), which had begun to take shape in the 1980s and spelled out the responsibilities of the Autonomous Communities in the design and introduction of policies for the protection of children, were conducted in accordance with the new conception of children as members of society and holders of the rights set out in the Convention.

92. Several of the Autonomous Communities have produced and are carrying out their own programmes for children, which are integrated programmes at least in their formulation.

93. Many local corporations, in addition to providing community social services, have also produced municipal programmes for children. Many corporations have established municipal councils on children, in which children themselves can be involved, and children's advice centres have been set up.

94. Large amounts of public money are provided for programmes for the promotion of children's rights and leisure activities, as well as for the formation of children's and youth associations.

95. The annual celebration of Universal Children's Day on 20 November has become an occasion for renewing the commitment to the rights of the child.

96. Institutions for the protection and promotion of rights have been established. At the State level, the Protection of Minors Act provides in connection with measures to facilitate the exercise of the rights of the child that an Assistant Ombudsman should be permanently responsible for children's affairs and that children may submit to him any complaints concerning the defence and safeguarding of their rights. In the Autonomous Communities, similar specific institutional arrangements have been made for the protection of minors.

97. Progress has been made towards a system of information on children. The creation of the Data Bank on the Protection of Children, the database on children, and the Children's Watch, together with the specific systems created by the Autonomous Communities, constitute significant progress.

98. Children's organizations are playing a very active part in the implementation of the programmes funded the public administrations, many of which are integrated (health, education), in the promotion of participation, in the support of public measures connected with open spaces and free time, in the creation of facilities such as children's hotlines, which children can use to report infringements of their rights, and in the defence of rights at the European level.

99. Recent years have seen the emergence of networks of professionals concerned with the promotion and protection of the rights of the child and the prevention of maltreatment and with the care of maltreated children.

100. During the 1990s several universities have been carrying out research and teaching programmes on the rights of the child and encouraging the creation of networks of professionals interested in the study of children. Plans for the training of professionals working with children have been formulated and are being implemented at both State and autonomous levels.

2. The difficulties encountered and the ground still to be covered

101. The analyses made in connection with the preparation of the second report and the meetings and discussions over recent years among administrators and social and professional organizations identified the persisting difficulties in the application of the Convention and the legislation and in policy implementation. The aims yet to be achieved were also identified, together with the challenges for the future set by institutions and social organizations.

(a) The promotion and enactment of legislation

102. It may probably be assumed that sufficient legislation has been enacted for the formal recognition and establishment of children's rights, for the most recent legislation now includes references to the Convention.

103. Future progress will therefore have to lie in the area of real guarantees of the exercise of the rights enunciated in the legal instruments, including more explicit recognition of the Convention as a part of positive law and more widespread citation of the Convention in legal proceedings.

104. Since girls victims of sexual abuse are sometimes subjected to cross-examination by their alleged attackers during the deposition of personal testimony, it is important for the civil and criminal procedures in which children participate to be adapted to take account of their degree of maturity and protect their right to privacy. Several experts and professionals are proposing in this connection that the Criminal Proceedings Act should contain express provisions on the necessary special arrangements for and specific nature of statements made in court by a child victim with respect to an adult. Proposals are being formulated to render the procedural safeguards of the accused compatible with the psychological integrity of minors.

(b) The promotion of knowledge of the Convention and awareness on the part of society and institutions of the exercise of the rights of the child

105. Eight years have passed since Spain's ratification of the Convention but it is still not sufficiently well known or invoked by the public at large, many of the professionals working with children, many public institutions and even the courts. In some circles it remains the norm to refer to the 1959 Declaration.

106. Even in circles in which the Convention is already familiar it is still regarded by some people as a mere declaration of intent instead of as a binding rule of law. It will therefore be useful to continue to publicize the Convention in society at large in order to safeguard the rights of children and their status as citizens.

107. It will certainly be no easy task to secure a prevailing social and institutional attitude focused on the needs of children and their protection and on the human rights of children, as well as on their status as citizens, which enjoys less widespread cultural recognition.

108. Increased awareness of the exercise of human rights by children, in particular their civil rights, at school, in the family and in the places where they spend their leisure time will no doubt require the due harmonization of such exercise with the responsibilities of children towards society, an understanding of the potential conflicts of rights and interests in these contexts, and due reconciliation of the dependence associated with the civil status of minor and the independence accorded by the possession of rights, as well as a learning process for children and adults to develop relations based on dialogue and negotiation.

(c) Educational issues

109. There are still many immigrant or minority families living in very poor conditions in settlements in several big cities. Hundreds of children from these families suffer from the typical illnesses generated by these conditions, and they do not attend school either.

110. In addition to the proposed solutions to the social/health problem and the resettlement plans it is important to deliver the right to education for the children of immigrants, and it must also be borne in mind that the precarious socio-economic and labour conditions of the immigrant families in these settlements make school attendance by the children very difficult.

111. The high truancy and drop-out rates found among the gypsy population and in socio-economically deprived areas must also be tackled.

112. In all cases there must be effective application, where the right to participation is concerned, of Royal Decree 732/1995 of 5 May on the rights and duties of schoolchildren and standards of behaviour. The committees on social behaviour envisaged in the Decree may prove a means of negotiated conflict resolution and teaching negotiating skills to adolescents.

113. The extension of compulsory school attendance to age 16 was a big step forward with respect to equality of opportunities, but at the same time it has created new problems which must be addressed: adaptation to the requirements of educating adolescents with histories of drop-out; curriculum changes to respond to the needs of this group; and support for teachers in making these adjustments and dealing with the lack of motivation of many adolescents and the conflicts that arise in some schools.

114. An effort must be made to tackle the isolated cases of peer violence or violence against the institution which occasionally occur in schools, even in the classroom, or are organized by groups from outside the school community.

115. Cross-curricular teaching must be developed.

116. It is important to guarantee the right to study and use the languages of the Autonomous Communities, while still protecting the rights of Spanish-speaking children.

117. Sufficient human and material resources must be provided for the equalization of standards in schools.

118. There is a need to draft curriculum components which make express reference to the principles set out in the Universal Declaration of Human Rights and in the Convention.

(d) Health issues

119. In 1998 several social organizations drew attention to the administrative difficulties encountered by many illegal immigrant children in obtaining the health care to which they are entitled in Spain; this will be discussed in other parts of the report.

120. As a result of these reports and the action taken by a number of public prosecutors, both the National Health Institute and the Ministry of Labour and Social Affairs and the Autonomous Communities to which responsibility for health matters has been transferred had already taken, at the time of closure of this second report, appropriate action to safeguard this right, when necessary, in

primary care facilities and in hospitals for all immigrant children, and to guarantee their parents confidentiality of the data collected in the administrative process.

121. Social organizations of the Platform of Children's Organizations have called upon certain administrations to introduce adequate safeguards of the proper mental health care of children, to provide sufficient assistance services and resources for this population, and to establish adequate social/health coordination.

(e) Improvement of the system of social care for children

122. At the present stage of consolidation of this system in all the Autonomous Communities further progress is needed in the improvement of the quality of the care services.

123. The training of professionals must be a priority in the strategies to enhance the quality of the system's primary and secondary services.

124. Special attention will have to be given to the training of professionals working in residential care facilities for adolescents with serious behavioural problems.

125. In the provision of care for minors subject to administrative guardianship who reach the age of majority but continue to live in a public institution it is important to follow the policy already initiated by one Autonomous Community of designing and implementing programmes to prepare them for personal independence, including guidance on how to find accommodation and work, especially in the case of disabled persons.

126. It is important to provide an adequate network of residential facilities for juvenile offenders and to find sufficient human and financial resources to be able to give priority to and implement effectively in all the Autonomous Communities suitable alternatives to confinement in an institution.

127. The frequent arrival in some Spanish towns of unaccompanied adolescents from the Maghreb without documents causes particular protection problems for the autonomous authorities, especially as the minors themselves often reject or abandon the residential care offered.

(f) Intersectoral and coordinated policies for children and prevention programmes

128. The exercise of the rights recognized in the Convention requires the formulation of intersectoral policies for children either under the Programme of Action for Children mentioned earlier or by other means. Intersectoral planning will facilitate the implementation of prevention programmes having an impact on children.

129. The implementation of intersectoral policies requires the improvement of the existing coordination in order to secure integrated action by the different care sectors and the other sectors working with children at both primary and secondary levels, especially the education, health and social services.

130. It is important for the Autonomous Communities to improve the coordination among the various departments (Education, Health, Social Services).

131. Consideration will have to be given in urban development plans and in the design of leisure facilities to children's needs with respect to leisure and play areas and facilities and to the provision of sufficient safety measures.

132. Intersectoral efforts to reduce and prevent discrimination against and exclusion of the gypsy and immigrant minorities will have to be intensified.

(g) Development of an information system

133. When it comes to information systems, the variety of the arrangements in the Autonomous Communities and the fragmentation of the information on children among different agencies, in the absence of mechanisms to ensure a smooth flow of information between them, make it difficult to obtain comprehensive information about the situation of children to provide proper guidance for policy-making.

134. Although the Data Bank on the Protection of Children and the database on children have been established, it is important to ensure that they are kept up and developed so that sufficiently representative data will be available for any situation report on children required anywhere in the country, as well as for disaggregation exercises for the autonomous territories.

135. In any event, there is still a long way to go before Spain has a national coordinated and standardized information system to allow constant monitoring of the situation of children and improved management of the day and residential care services and of the care itself.

136. The Children's Watch project implemented with the technical support of the database on children may prove to be a suitable instrument for this purpose.

D. The preparation and drafting of the second report

137. This process included the following stages and activities:

1. Preparation of protocols and questionnaires

138. Beginning in February 1997 as part of the regular technical work with the Autonomous Communities, an analysis was made of the structure and content of the guidelines document provided by the Committee (CRC/C/58).

139. This analysis determined the feasibility of obtaining the various kinds of information to be included in the second report and identified the information needs and sources for the whole country. Criteria were also established for the structuring and coding of the questions and for their formal placement in the questionnaire. This process resulted in the production of a questionnaire with 166 questions taken from the Committee's guidelines.

140. This general questionnaire was used as the basis for the specific questionnaires for each information source; the selection was made on an assumption as to which questions each source would be able to answer.

2. Communication with the information sources

(a) The sources of information

141. The report was prepared from data supplied by the following sources:

(a) Projects and programmes promoted and financed by the Office for Social Action, Children and the Family of the Ministry of Labour and Social Affairs;

(b) Governmental agencies: Ministry of Education and Culture; Ministry of Health and Consumer Affairs; Ministry of the Interior; Ministry of Justice; Government Prosecutor's Office; General Council of the Judiciary; National Institute of Statistics; National Drugs Plan; Institute for Migration and Social Services; Spanish International Cooperation Agency; Sociological Research Centre; Institute for Youth; Institute for Women;

(c) Autonomous Communities: offices responsible for policies for children;

(d) NGOs and other social organizations:

(i) Platform of Children's Organizations;

(ii) Spanish Confederation of Parents' Associations;

(iii) At the request of the Ministry of Labour and Social Affairs, the Matrimony and the Family Institute of the Pontifical University of Comillas produced a comprehensive legal report on the children's legislation of the State and the Autonomous Communities which proved very important for the drafting of this second report.

(b) Procedure for the collection of information

142. Each of the sources was sent a specific questionnaire for the collection of information, with instructions on how to complete the questionnaire and with computer support.

143. In the Autonomous Communities the offices responsible for the protection of children, which were the principal sources, had to request specific information from other agencies, such as Health and Education in the Communities which had taken over responsibility from the State in those sectors. In the other Communities the information was requested directly from the Ministry of Health and Consumer Affairs and the Ministry of Education and Culture.

144. The sources returned the completed questionnaires in hard copy and in computerized form, together with supplementary documentation to support the information given.

(c) The communication process

145. Throughout the preparation process the Office for Social Action, Children and the Family used mailings and policy and technical meetings to communicate the purposes of the report to the institutions and social organizations involved.

146. Each source designated one person with whom the Office maintained constant bilateral contacts during the data-gathering process in order to provide computer and other technical support.

3. Storage and organization of the information

147. For the purposes of storing, organizing, processing and retrieving all the data supplied by the sources the Office created a database (the database on children) structured in accordance with the

general questionnaire referred to in paragraphs 139-140; all the data for the drafting of the report was entered in this database.

4. Production of the first draft of the report

148. A first draft of the report was produced from the information supplied by the sources and submitted to them for review.

5. Comments on the first draft

149. The sources commented on the first draft and submitted further information by post and telephone and at working meetings.

6. Production of the final version

150. The final version of the report was completed in February 1999 on the basis of the first draft and the comments made by the institutions and organizations.

E. Assessment of the preparation process

1. Comments on the process and the methodology used

151. The preparation of the second report opened the way to a fruitful analysis of policies for children in Spain. Many departments of the General Administration of the State and the Autonomous Communities and the social organizations which design and implement these policies took part in the process.

152. The preparation process also offered an opportunity to identify the difficulties still encountered in collecting systematic data on the situation of children and organizing these data into information systems both in the Autonomous Communities and in the General Administration. The need for data for the preparation of the report highlighted the difficulties.

153. These difficulties also pointed to the need to work in the future on the development of an information system like the one referred to in paragraphs 128-132.

2. Comments on the Committee's guidelines document

154. The guidelines document (CRC/C/58) was the permanent reference framework for the preparation of the second report.

155. It formed the basis for the general questionnaire from which the specific questionnaires sent to the information sources were drafted. For the purposes of this questionnaire the United Nations translation of the original English text of the guidelines was revised: linguistic changes were made to the form and some minor inaccuracies were corrected.

156. The paragraphs of each section of the guidelines were numbered in order to make it easier for the sources to answer and to improve the structuring of the information sent back. In some cases paragraphs were deleted or merged for reasons of redundancy.

157. Many comments were also received on the document as a working tool:

(a) It is an exhaustive guide for seeking information and makes manifest the scale and thematic scope of the approach which can and should be taken in policies for children;

(b) It offers guidance in the search for information and the construction of systems of information on children;

(c) It helps to identify the strong points in the existing information systems as well as the many gaps;

(d) However, the document is also excessively long and under-edited, and the same information is often requested in different paragraphs;

(e) Many of the administrations thought it out of proportion to countries' actual information systems, which are often not firmly established and do not usually collect specific information on children;

(f) The huge amount of information requested may have some instructional value in that it indicates the parameters for systems of information on children, but its volume and lack of proportion and the degree of disaggregation requested may at the same time prove discouraging for the continuation of the work rather than an incentive.

F. The structure of the report

158. The report was structured in accordance with the guidelines document and its sequence of chapters, sections and paragraphs.

159. Information on the measures taken by the State is usually given first, followed by information on the ones taken by the Autonomous Communities and by social organizations.

160. Information corresponding to several sections or parts of the same section is sometimes grouped together when the sources have not separated it out or when the questions overlap or duplicate each other. In any event, the sections and paragraphs have the same numbering as in the questionnaires sent to the sources.

161. In order to make the report easier to read, the tables and charts are presented in annex A rather than in the text itself.

162. Annex B contains a listing of the legal instruments ratified by Spain referred to in several sections of the report.

I. GENERAL MEASURES OF IMPLEMENTATION

A. Reservations (CRC/C/58, para. 11)

163. The Spanish Parliament ratified the Convention on 6 December 1990, and it entered into force on 5 January 1991.

164. Spain did not enter any reservations in the instrument of ratification (Boletín Oficial del Estado, 31 December 1990) but did make the following declarations:

> "Spain understands that article 21, paragraph (d), of the Convention may never be construed to permit financial benefits other than those needed to cover strictly necessary expenditure which may have arisen from the adoption of children residing in another country."
>
> "Spain, wishing to make common cause with those States and humanitarian organizations which have manifested their disagreement with the contents of article 38, paragraphs 2 and 3, of the Convention also wishes to express its disagreement with the age limit fixed therein and to declare that the said age limit appears insufficient, by permitting the recruitment and participation in armed conflict of children having attained the age of 15 years."

165. Spain maintains the positions stated in these reservations.

B. Measures adopted to bring national legislation and practice into conformity with the provisions of the Convention (CRC/C/58, para. 12)

1. Measures adopted by the State

166. As already stated in the Introduction to this report, the legal framework created by the promulgation of the 1978 Constitution led to substantial changes in the conception of the civil rights of children along the lines established by the Convention some years later. Both the Introduction and the initial report (paras. 176-183) drew attention to the historic milestone marked by Act 21/1987 of 11 November, which amended the Civil Code and the Civil Proceedings Act with respect to adoption and gave birth to a modern system for the protection of children consistent with the spirit and letter of the Convention adopted two years later.

167. These and other amendments obviated the need for a general revision of domestic legislation to bring it into line with the Convention. However, the following paragraphs in this section and other parts of the report contain an analysis of the development of law both by the State and by the Autonomous Communities which made and continue to make ever more finely tuned changes in order to render legislation consistent with the spirit and letter of the Convention.

168. In addition, as pointed out in section B.2 of the Introduction, there is no doubt that the policies for children in the 1990s bear the imprint of Spain's ratification of the Convention in 1990.

(a) The Spanish Constitution

169. Several paragraphs of the initial report and the Introduction to the second report refer to the 1978 Constitution. While it is true that the text of the Constitution itself makes very few references to the rights of the child, great importance attaches to article 39 on the protection of the family, to article 20, which establishes the freedom of expression and stipulates the protection of children as a limit to the exercise of this right, and to article 27 on the right to education.

170. Paragraph 4 of article 39 is of particular importance, for it states: "Children shall enjoy the protection provided for in the international agreements which safeguard their rights"; it thus underlines the importance of this protection. This principle of the Constitution has guided and must continue to guide Spain's policies for children both with respect to the incorporation of the international texts on the rights of the child and in the development of domestic law.

171. This paragraph also means that, as a result of Spain's ratification of the Convention, the Convention automatically becomes a law which must be applied to the fundamental rights of the child.

(b) Organizational Act 1/1996 of 15 January on the legal protection of minors and partial amendment of the Civil Code and the Civil Proceedings Act (the Protection of Minors Act)

172. The application of Act 21/1987 and the institutional and professional practice in the care of children had been drawing attention to the opportunities and to the situations in which the Act was not working satisfactorily.

173. The analysis of these situations and the many exchanges between agencies of the General Administration of the State, officials of the Autonomous Communities, professionals and social organizations had been preparing the ground for the promulgation in 1996 of the Protection of Minors Act, which supplemented and updated the reform of the legislation on the social protection of children initiated by Act 21/1987.

174. The Protection of Minors Act is a fundamental legal instrument drafted pursuant the Constitution, which, as we have just seen, deals with the protection of children in article 39. The Act proclaims in its preamble the need to fill the gaps in Spanish legislation with regard to the protection of children and it therefore seeks "to construct a broad legal framework of protection binding on all public authorities, on institutions dealing with children, on parents and families, and on the population at large".

175. Furthermore, the Act is fully consistent with the changes affecting children initiated in the 1980s and with the principles of the Convention.

176. According to the explanatory preface to the Act, the new approach to children's rights reorganizes the protection accorded to minors by the State and entails their full recognition as holders of rights and their effective capacity to exercise them.

177. The new Act addresses three specific needs:

(a) To fill the gaps in Act 21/1987 both in the general configuration of the system of protection and in the harmonization of the judicial and administrative procedures, and to supplement, clarify or modify certain aspects of the regulation of this protection;

(b) To incorporate the requests and suggestions of public bodies and professionals and experts involved in the protection of children, as well as the recommendations of the Ombudsman, the Government Prosecutor's Office, the Autonomous Communities, and groups of parliamentarians;

(c) To incorporate in the legislation on children the spirit and letter of the Convention, which calls for greater participation and advocacy of children in society at large and in procedures and decisions affecting children.

178. Owing to the separation of powers under the Constitution, the Act limits itself to setting the general framework and establishing the structure and basic functions of the institutions for the protection of children so that the Autonomous Communities may later develop the principles and take responsibility for implementation. Moreover, the Act's substance lies in the amendment of the Civil Code and the Civil Proceedings Act.

179. With regard to the Act's harmonization with the Convention, article 3 states that children shall enjoy the rights accorded to them under the international treaties to which Spain is a party, in particular the Convention on the Rights of the Child, in accordance with which the Act must be interpreted.

180. Chapter II of the Act restates many of the rights set out in the Convention: the rights to respect of reputation and to personal and family privacy, the inviolability of the home and correspondence (art.4 of the Act and art. 13 of the Convention); the right to freedom of thought, conscience and religion (art. 4 of the Act and art. 14 of the Convention); the freedoms of association and assembly (art. 7 of the Act and art. 15 of the Convention); the right to freedom of expression (art. 8 of the Act and art. 12 of the Convention); and the right to be heard (art. 9 of the Act and art. 12 of the Convention). The Act also includes among the guiding principles of the activities of the public authorities "the primacy of the best interests of the child" (art. 11 of the Act and art. 3.1 of the Convention). In addition, articles 12 to 25 of the Act and some of its additional and final provisions deal at length and in detail with the rights of children at risk or in need of protection, as well as regulating adoption procedures, matters covered in articles 20 and 21 of the Convention.

181. As far as its scope is concerned, the Act applies "to all persons aged under 18 years within Spanish territory" (art. 1), thus coinciding with the age scope of the Convention.

182. This means that:

> "Foreign children living in Spain have the right to education. Foreign children who are in a situation of risk or under the supervision or guardianship of the competent public administration, even when not legally resident in Spain, are entitled to health care and the other public services" (art. 10.3).

183. The Act describes the system of care and protection of children established in the Civil Code. It follows the sequential order of the measures in question, beginning at the moment when it is realized that a minor is in need of protection and ending with an analysis of the various institutional options.

184. Thus the Act first regulates the actions which must be taken in such situations by public bodies and professionals and by the citizenry and then goes on to describe the various levels of protection which can be ordered in the light of the seriousness of the circumstances:

(a) The first level consists of the monitoring of the development of the risk situation;

(b) The second level consists of the declaration of desamparo ("lack of protection": see paras. 958-962 below) and the assumption of custody by a public body when the case is more serious;

(c) In the light of this second situation, the third level consists of the various protection options: guardianship, placement in an institution or foster family, and adoption as the definitive solution.

185. The following are the principles underlying these measures referred to throughout the Act:

(a) All measures must take into account the best interests of the child and not obstruct his social, school or work life;

(b) Whenever possible, an attempt must be made to secure the collaboration of the child and his family in the protection measure;

(c) Whenever possible, efforts must be made to allow the child to remain in his family environment;

(d) Lastly, efforts must be made to integrate the child in the family taking the place of his natural one.

186. The following are the Act's most significant innovations:

(a) It defines the nature, content and effects of guardianship ex lege or "by operation of the law". Here the main innovation is the express statement that the assumption of guardianship by a public body entails the suspension of parental authority or ordinary guardianship;

(b) The Act specifies stronger safeguards in the procedure for assumption of guardianship in order to avoid situations of lack of protection:

(i) It establishes the obligation of the public body to inform the parents, guardians or foster parents of the declaration of desamparo within 48 hours, if possible in person;

(ii) It removes the existing vagueness about the system of remedies by establishing that appeals may be lodged against declarations of desamparo in the civil jurisdiction under the procedure of non-contentious jurisdiction, with no need for a prior administrative application;

(c) With regard to situations involving lack of protection, a distinction is made between:

(i) Situations of risk not requiring the separation of the child from his family;

(ii) Situations of desamparo, which entail the removal of the child from his family owing to their greater seriousness;

(d) Placement:

(i) The possibility of permanent placement is created for those situations in which it is inappropriate for the child to return to his family but adoption is not deemed suitable;

(ii) For the first time, the Act provides a classification of the different types of placement. There are two main categories: placement in an institution and placement in a family. Placement in a family may take three forms: simple, permanent, and pre-adoptive. No such distinctions were made in the past because placement was regarded as a temporary measure;

(iii) Provisional placement in a family is available when the biological parents oppose the placement measure or to avoid the need for the child to be placed in an institution during the legal proceedings;

(iv) The parameters of the document setting out the formalities of the placement measure are defined;

(e) Express judicial authorization is required for the confinement of a minor in a psychiatric facility; this represents a break from the previous practice, which was denounced by the Ombudsman and the Government Prosecutor's Office;

(f) Where adoption is concerned, the Act introduces the requirement of the suitability of the adoptive parents, which must always be assessed by the public body concerned;

(g) International adoption is regulated for the first time:

(i) The Act regulates the functions of the public bodies (issue of certificates of suitability, obligation to monitor the adoption, and accreditation of agencies) and the functions of duly accredited collaborating international adoption agencies (information and counselling, processing of applications);

(ii) It also regulates the basic accreditation requirements for such agencies, stressing that they must not operate for profit and that one of their statutory purposes must be the protection of children;

(h) Throughout the Act there is a constant concern to make it clear that the protection of children is a matter for society at large. Hence the clear definition of the obligations in situations of lack of protection not only of the competent public bodies but also of the professionals and of the whole populace (art. 13, on civic obligations).

(c) The new Criminal Code

187. The new Criminal Code was introduced by Organizational Act 10/1995 of 23 November. The previous text had originally been adopted in the nineteenth century, although it subsequently underwent many partial amendments. The new Code simplifies the types of crime and the system of penalties, adapting them to the realities of Spain's present society.

188. The following are some of the points most relevant to the protection of minors:

(a) Criminal responsibility is extinguished in certain cases by a pardon given by the victim. However, in the case of offences or misdemeanours committed against a child or a disabled person the courts, having heard the representative of the Government Prosecutor's Office, may declare invalid a pardon given by the representatives of a victim and order the continuation of the proceedings or the enforcement of the sentence;

(b) Consent given by a minor to organ transplants, sterilization or sex-change surgery is void, and these procedures are treated as crimes if applied to children;

(c) However, the sterilization of a child with a serious mental defect is not an offence when authorized by a court in the child's best interests;

(d) There are new rules on offences against personal sexual integrity. The basic types of offence are sexual attack (with violence or intimidation) and sexual abuse (no violence or intimidation but without the victim's consent). Offences against sexual integrity are discussed at length later in the report. A bill on reform of the Criminal Code is currently before Parliament; it deals with offences against sexual integrity and is also discussed later;

(e) A chapter is devoted to offences against privacy: invasion of privacy without consent is treated as an offence. The offence is aggravated if committed against a minor. A complaint by the minor or his representative is not required: an action may be brought on the basis of a report of the Government Prosecutor's Office. In addition, the legal force of a pardon given by a minor victim or his representatives may be declared invalid, as in the case of offences against sexual integrity, in order to prevent such invasion of privacy going unpunished when it is concealed or encouraged by the persons responsible for the minor;

(f) A title is devoted to offences against family relations. It contains a chapter establishing the falsification of a minor's birth particulars or alteration of his paternity or civil status as offences. This chapter makes innovations with respect to the earlier rules on, for example, the offence of trafficking in children for purpose of adoption. Penalties are prescribed for the surrender of a child to another person in contravention of the legal procedures for guardianship, fostering and adoption and with financial compensation in order to establish a relationship analogous to filiation; penalties are likewise prescribed for intermediaries and the persons receiving the child even when the surrender takes place in a foreign country. Another chapter in the same title deals with offences against the rights and duties of the family, organizing and simplifying a number of offences already envisaged in the earlier legislation and facilitating their identification and, when necessary, prosecution: dereliction of the duties of guardianship, incitement of minors to leave their homes, abandonment of family or children, use of minors for begging, etc.;

(g) The age of majority is raised to 18 years from age 16 under the earlier legislation. However, the application of this rule will depend on the adoption of the bill on the criminal responsibility of minors currently before Parliament. At present, although the Criminal Code applies to minors who have reached the age of 16, there is a transitional scheme in operation which applies some aspects of the current legislation to children aged under 16, including the option of placement in a closed facility for juvenile offenders instead of imprisonment.

(d) Other points

189. Procedures are under way for the early ratification of the European Convention on the Exercise of Children's Rights (Council of Europe).

2. Measures adopted by the Autonomous Communities

190. Following the adoption of the 1978 Constitution Spain's administrative organization and structures underwent a series of big changes which also affected the protection of children.

191. Under article 148.1.20 of the Constitution, which states that they may assume jurisdiction in respect of social assistance, the Autonomous Communities have taken over jurisdiction for functions previously exercised by the General Administration of the State, although the Constitution reserves to the State jurisdiction in matters of civil law (art. 149.1.8) and criminal law (art. 149.1.6).

192. The Constitution also accords to certain Autonomous Communities the right to amend their civil law when it recognizes their legislative power with respect to substantive and procedural matters, adding to the reservation of jurisdiction to the State in matters of civil law an exception in the case of the "preservation, modification and development...of their civil rights, "fueros" or special rights, whenever these exist".

193. In fact, at the end of the 1980s, in the 1990s, and in particular over the five years covered by this report policies for children received special attention in the Autonomous Communities. One example of this attention is the extensive development of law, which takes account of recent social, institutional and professional experience of the care of children and their needs and rights and in many cases brings changes, progress and new opportunities to such care.

194. The law has been developed in two stages:

(a) In the first stage autonomous legislation was confined to the administrative aspects of the care of children lacking protection, such as the organs competent to make declarations of guardianship, the regulations governing children's homes, etc., which were necessary for the initial application of Act 21/1987;

(b) The second stage saw the promulgation of a number of rules with the status of law, rules which brought in all minors as holders of rights and founded the activities of the public administrations on the function of promoting the free personal development of children and adolescents.

195. There is no doubt that Spain's ratification of the Convention gave a definite boost to children's rights in domestic legislation.

196. In addition to the Protection of Minors Act, several autonomous acts have been adopted; within the jurisdiction of each Autonomous Community they constitute the development of the law on the protection of many of the rights set out in the Convention and establish channels for the fulfilment of the commitments entered into by Spain, in particular the commitment to secure the highest possible degree of well-being for children by ensuring the integrated development of their personalities.

197. In several of the laws mentioned below the public administrations also commit themselves to adopting the necessary measures for publicizing the rights of the child in the territory within their jurisdiction.

198. A list is given below of the autonomous legislation affecting children. Some of this legislation states expressly the obligation to respect and the duty to safeguard the exercise of the rights of the child contained in the Convention. Such references to the Convention are found in some cases in the text of the law itself, in other cases in the explanatory introduction or preamble.

199. Further references to these autonomous laws will be made elsewhere in the report in connection with the specific functions dealt with in each section.

(a) Andalusia

200. Pursuant to the jurisdiction assumed for "social assistance and services" under article 13.22 of its Statute of Autonomy, Andalusia adopted Act 1/1998 of 20 April on the rights and care of children, which makes express reference to the Convention and devotes its first title to children's rights.

201. Article 2 contains a commitment to ensuring that children enjoy "all the rights and freedoms recognized in the Constitution and in the Convention on the Rights of the Child and other international agreements...".

202. Chapter II deals with the protection of children's rights and appropriate procedures for ensuring their exercise.

(b) Aragón

203. Aragón adopted Act 10/1989 of 14 December on the protection of minors pursuant to article 35.1.19 of its Statute of Autonomy, which confers jurisdiction over "social assistance and welfare, community development" and "young people, promoting the conditions for their free and effective participation in political, social, economic and cultural development".

204. The whole of title I of this Act is devoted to children's rights. Although the Act was promulgated before the ratification of the Convention, its content is consistent with the Convention, especially with respect to the listing of rights.

205. There is a bill on children and adolescents which covers all the rights established in the Convention.

(c) Asturias

206. Asturias adopted Act 1/1995 of 25 January on the protection of minors pursuant to article 10.1 (p) of its Statute of Autonomy, which deals with jurisdiction "in matters of social assistance and welfare, including policies for children".

207. In addition to mentioning the Convention in its preamble, where it recognizes that minors "hold authentic subjective rights", the Act enumerates the rights of the child in title I, chapter II, and all are consistent with the provisions of the Convention.

208. Article 7 states:

> "Minors shall be guaranteed in all measures of protection the exercise of the personal and collective rights recognized in the Constitution, in other laws, and in the international agreements, treaties and covenants incorporated in domestic legislation, in particular the United Nations Convention on the Rights of the Child of 1989".

(d) Balearic Islands

209. Pursuant to article 5.1 of Organizational Act 9/1992 of 23 December on the transfer of jurisdiction, which accords jurisdiction over "institutions for the protection and guardianship of minors", the Balearic Islands adopted Act 7/1995 of 21 March on the guardianship and protection of neglected minors.

210. This Act states in its explanatory introduction that it derives from the commitment of the States parties to the Convention to "to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians or other individuals legally responsible for him or her" and to take to this end all appropriate legislative and administrative measures.

211. The Balearic Islands also adopted Act 6/1995 of 22 March on the application of judicial measures to juvenile offenders and Act 8/1997 of 18 December on the attribution of jurisdiction over the guardianship, placement and adoption of minors to the Islands Council.

212. A bill on the comprehensive protection of the rights of the child (the children's statute) is being prepared; it establishes a general framework for quality safeguards and public monitoring of services and benefits for children and guarantees the exercise of their rights. This draft statute provides that special attention must be given to children in the formulation of policies having an affect on them in other sectors, and it states the principle of non-discrimination and equity in the provision of services.

(e) Canary Islands

213. Pursuant to the jurisdiction in matters of "social assistance and social services and over public institutions for the protection and guardianship of minors" assigned in articles 30.13 and 30.14 of the

Statute of Autonomy, the Canary Islands adopted Act 1/1997 of 7 February on the integrated care of minors, the purpose of which is to establish the distribution of functions and responsibility for the care of minors among the public administrations of the Islands, regulate administrative measures of prevention for children in situations of risk, to protect and ensure the social integration of such children, and to fix the arrangements for collaboration and participation in these activities by society.

214. Article 3.1 of the Act states expressly:

> "Minors shall enjoy the personal and collective rights accorded to them in the Constitution, in the treaties, agreements and covenants ratified by the Spanish State, in particular the Convention on the Rights of the Child of 20 November 1989, and in other legislation".

(f) Cantabria

215. Under article 22.18 of its Statute of Autonomy Cantabria has jurisdiction over "assistance and social welfare, including youth policy"; this provision formed the basis for the adoption of the Social Action Act of 27 May 1992. No specific legislation on children has been drafted.

216. Regulations on administrative measures in matters of adoption, foster care, guardianship, custody and placement of minors were approved by a decree of 7 September 1992.

(g) Castile-La Mancha

217. Article 31.1 (p) of the Statute of Autonomy accords jurisdiction over "social assistance and social services, advancement of and assistance for minors, young people, the elderly...", but no specific legislation on the protection of children has been drafted.

218. Article 9 of the Solidarity Act (5/1995 of 23 March) states as a fundamental principle of policies for the care of children "the safeguard of the individual and collective rights of all minors, as stipulated in the Spanish Constitution, the Convention on the Rights of the Child, and the recommendations on children of the Council of Europe".

219. Another relevant instrument is Decree 143/1990 of 18 December on procedure in matters of the protection of minors.

220. A preliminary version of a draft children's act is being prepared and will be submitted to the Regional Parliament in the first half of 1999.

(h) Castile and León

221. Article 26.18 of the Statute of Autonomy accords jurisdiction over "social assistance and social services", but no specific legislation on the protection of children has been drafted.

222. In exercise of this jurisdiction the Community adopted its Social Action and Social Services Act of 28 December 1988, under which the autonomous administration assumes responsibility for the protection and guardianship of minors.

223. The Community has also issued several sets of regulations on adoption procedures and the operation of children's homes and services.

(i) Catalonia

224. Pursuant to the jurisdiction in social assistance matters accorded by its Statute of Autonomy Catalonia has enacted extensive legislation on the protection of children and has established an appropriate system of protection.

225. Article 2 of Act 11/1985 of 13 June on the protection of minors limits the sphere of action to: "(a) treatment of juvenile delinquency; (b) prevention of juvenile delinquency; (c) guardianship of minors in the event of defective or inappropriate exercise of parental authority or the right of custody or upbringing".

226. Act 37/1991 of 30 December, on the protection of minors and on adoption, Act 8/1995 of 27 July, on the care and protection of children and adolescents, and the amendments to Act 37/1991 all emphasize that minors must enjoy all the rights accorded in "the international treaties, agreements and resolutions, in particular the United Nations Convention on the Rights of the Child...".

227. These Acts were recently combined into the Family Code adopted by the Catalonian Parliament as Act 9/1998 of 15 July.

228. Catalonia has also issued several sets of regulations on the procedures for national and international adoption and the operation of children's homes and services.

(j) Extremadura

229. Pursuant to the jurisdiction in matters of "social assistance and protection" accorded in article 7.20 of its Statute of Autonomy Extremadura promulgated Act 4/1994 of 10 November on the protection and care of minors. The preamble stresses that "the best interests of children and respect for their freedom and dignity must prevail at all times over any other competing interest".

(k) Galicia

230. Pursuant to the jurisdiction in matters of "social assistance" accorded in article 27.23 of its Statute of Autonomy Galicia adopted Act 3/1997 of 9 June on the family, children and adolescents, which provides that "children and adolescents shall enjoy the rights proclaimed in the Convention on the Rights of the Child without any discrimination or differential treatment by reason of personal, family or social circumstances".

(l) La Rioja

231. Pursuant to the jurisdiction in matters of "social assistance and social welfare, including youth policy" accorded in article 8.1.18 of the Statute of Autonomy La Rioja promulgated its Children's Act (No. 4/1998 of 19 March).

232. Article 8 states:

> "Minors shall be guaranteed in any measure of protection the exercise of the individual and collective rights recognized in the Constitution and other legislation and in the international agreements, treaties and covenants incorporated in domestic legislation, in particular the Convention on the Rights of the Child".

(m) Madrid

233. Pursuant to the jurisdiction in matters of "social assistance" accorded in article 26.18 of its Statute of Autonomy Madrid adopted Act 6/1995 of 28 March on safeguards of the rights of children and adolescents.

234. The preamble to this Act refers to the advocacy of children's rights which led to the ratification of the Convention, and article 1 states the express aim of "ensuring within the jurisdiction of the Community of Madrid the necessary safeguards for the exercise of the rights accorded to minors in the Constitution, the Convention on the Rights of the Child, and all other legislation".

235. The Act stipulates as a principle of the activities of autonomous and local administrations "...priority attention to the best interests of the child over any other legitimate competing interest on the terms established in the Civil Code and the Convention on the Rights of the Child".

236. A bill on councils on the care of children and adolescents is currently being drafted.

(n) Murcia

237. Pursuant to the jurisdiction in matters of "social welfare and services" accorded in article 10.1.18 of the Statute of Autonomy Murcia adopted its Children's Act (3/1995 of 21 March 1995).

238. The preamble to the Act cites the Convention among its antecedents. Title I lists the fundamental rights of the child, and article 4 (a) stipulates as a guiding principle of the activities of the Autonomous Community "respect for the individual and collective rights recognized in the Constitution or the international treaties and agreements signed by the Spanish State, and for any other rights recognized in the legislation in force".

(o) Navarra

239. Under article 44 of its Statute of Autonomy Navarra has jurisdiction over "social assistance and policies for children and young people", but no specific legislation on children has been adopted.

240. Pursuant to this jurisdiction Navarra adopted the Social Services Act of 30 May 1983. Children are specified as one of the groups benefitting from these services, with emphasis on measures to mitigate unsatisfactory family circumstances and on the establishment of systems of guardianship and protection, on which regulations have been introduced.

241. The Act of 16 May 1991 on the prevention and restriction of the consumption of alcoholic beverages by minors is particularly relevant.

(p) Basque Country

242. Articles 10, 12 and 39 of the Statute of Autonomy accord jurisdiction over inter alia "social assistance and policies for children and young people", but no specific children's legislation has been adopted. The Social Services Act of 20 May 1982 includes the protection of children among its priorities.

243. Draft legislation exists on the care and protection of children and adolescents with regard to the exercise of their rights and responsibilities.

(q) Valencia

244. Valencia adopted its Children's Act (7/1994 of 5 December) pursuant to the jurisdiction in matters of "social assistance" accorded in article 31.24 of the Statute of Autonomy.

245. The preamble to the Act declares the incorporation of "the individual and collective rights of the child recognized in the Constitution, international instruments and the civil legislation of the State, which constitute the framework of legal safeguards, in particular the United Nations Convention of 1989...".

246. Article 3 stipulates as a fundamental principle of the activities of the public authorities "the comprehensive protection of children, the prevention of risks, and the defence and guarantee of the rights accorded to children in the Constitution and the international agreements under which the exercise of these rights is monitored..."

247. There are regulations on the procedures for the application of protection measures and the operation of children's homes and services, both those run by the Autonomous Community and those operated under agreements with private agencies.

C. The status of the Convention in domestic law (CRC/C/58, para. 13)

1. Measures adopted by the State

248. As already pointed out in the Introduction and in section B of this chapter, children's rights are mentioned in a number of articles of the Spanish Constitution.

249. For example, the intrinsic right to life stated in article 6 of the Convention is recognized in article 15 of the Constitution; the right to liberty and security referred to in article 37 of the Convention is found in article 17 of the Constitution; children's right to express their opinions freely in all matters affecting them - when they are capable of forming their own views - (art. 12 of the Convention) is covered by article 20 of the Constitution (which sets as a limit to the freedom expression "the protection of young people and children"); the freedom of conscience and religion of article 14 of the Convention appears in article 16 of the Constitution: the freedoms of association and peaceful assembly of article 15 of the Convention are dealt with in articles 21 and 22 of the Constitution; the right to privacy and family life and not to be subjected to arbitrary interference in one's home or correspondence (art. 16 of the Convention) is referred to in article 18 of the Constitution; children's right not to be subjected to physical or mental violence , maltreatment, exploitation or sexual abuse (arts. 19, 32, 33, 34, 35, 36 and 37 of the Convention) is included in article 15 of the Constitution, which prohibits torture and inhuman or degrading punishment or treatment; the right to education of article 28 of the Convention is regulated in article 27 of the Constitution; the right to effective legal protection and qualified assistance, the right not to give testimony against oneself or to confess guilt, the right to be presumed innocent and not to be punished for acts or omissions not prohibited by national or international law at the time of commission (art. 40 of the Convention) are covered by articles 24 and 25 of the Constitution. And the right to health of article 24 of the Convention is recognized in article 43 of the Constitution.

250. Furthermore, almost all the rights common to the Convention and the Constitution are, according to the Constitution, fundamental rights of the individual. These rights are addressed in chapter II, section I, of the Constitution, concerning fundamental rights and public liberties. This also applies to: the right to life and physical integrity; the right not to be subjected to torture or inhumane or degrading punishment or treatment; the freedom of thought, conscience and religion; the right to liberty and security; the right to honour, privacy and family life and the inviolability of the home and of

correspondence; the freedom of expression; the right of association and peaceful assembly; the right to effective legal protection and qualified legal assistance; the right not to give testimony against oneself or to confess guilt and the right to be presumed innocent; the right not to be punished for acts or omissions not prohibited by national or international law at the time of commission; and the right to education. Obviously, exceptions have to be made: for example, in order to exercise the right to hold public office or the right to vote a person must have reached the age of majority.

251. This convergence of the Convention and the Constitution is of capital importance for the legal status of the Convention. Article 10.2 of the Constitution states:

> "Legislation on the fundamental rights and the freedoms accorded by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international human rights treaties and agreements ratified by Spain".

252. Following its official publication every validly ratified treaty becomes part of Spain's domestic law. However, these treaties have a higher status than domestic law, as several decisions of the Constitutional Court have demonstrated. Moreover, the courts give precedence to the application of a treaty over a domestic law, and of course in no case may a treaty be amended or revoked by a merely domestic law.

253. In this connection, article 10.2 seeks to establish an interpretative criterion in favour of international law in matters of fundamental human rights. This means that, in the event of a hypothetical conflict between the treatment of a fundamental right in domestic law and its treatment in an international treaty ratified by Spain, all the rights contained in title I, chapter II, of the Constitution, where their application to children is concerned, are subject to the Convention as the interpretative model for their legal treatment in Spain.

254. For this reason, article 3 of the Protection of Minors Act, discussed above, states:

> "This Act and its regulations and other legal provisions concerning minors shall be interpreted in conformity with the international treaties to which Spain is a party, in particular the United Nations Convention on the Rights of the Child of 20 November 1989".

255. With regard to the possibility of invoking the Convention before the courts, pursuant to article 96.1 of the Constitution, under which all the provisions of validly ratified treaties are automatically incorporated in domestic law, the rights contained in the Convention form part of that law. This means that individuals may invoke such rights directly before Spanish courts and that the national authorities must know and apply the Convention. Article 39.4 reinforces this position by referring to the possibility of children enjoying the rights accorded to them in the treaties.

256. In decision 67/1998 of 18 March 1998, referred to in other sections of the report, which was handed down under amparo application 109/95 in respect of non-payment of maintenance and established the principle of non-discrimination against children by reason of birth, the Constitutional Court cited the Convention among the grounds for its decision, thus reflecting the additional protection afforded to children by the Convention (legal ground No. 5). The amparo application lodged by the mother was based precisely on the infringement of the fundamental right of her daughter, born out of wedlock, not to suffer discrimination by reason of her birth.

257. What was said earlier about the legal status of the Convention and the precedence given to the application of treaties over domestic law should be borne in mind with regard to the direct application of the provisions of the Convention.

258. In any event, this primacy of treaties and the impossibility of the amendment or revocation of a treaty by a domestic law is more a question of procedure than of ranking.

259. Treaties are drafted differently from laws, for several sovereign States take part in the process; they must therefore be amended in this ad hoc manner - according to rules contained in the treaty itself or, if there are none, according to the general rules of international law.

2. Measures adopted by the Autonomous Communities

260. Section B of this chapter lists the many specific laws on children adopted by the Autonomous Communities in the 1990s which expressly recognize the rights set out in the Convention.

D. Provisions of national legislation more conducive to the realization of the rights of the child (CRC/C/58, para. 14)

261. See section B above.

262. In addition to adopting national legislation Spain has ratified or adhered to international conventions which directly or indirectly affect the rights of the child (see ch. VII, section A.1).

E. Judicial decisions applying the principles and provisions recognized by the Convention (CRC/C/58, para. 15)

263. The initial report referred in paragraph 8 to the judgment of the Constitutional Court of 14 February 1991 declaring unconstitutional the procedure followed up to that time by the juvenile courts.

264. Reference has been made above to judgment 67/1998 of the Constitutional Court of 18 March 1998.

265. In a ruling of 31 March 1998 the Constitutional Court declared admissible a question of unconstitutionality submitted by juvenile court No. 1 in Valencia concerning the language of article 2.2 of Organizational Act 4/1992 of 5 June and the possibility of its violating article 24.2 of the Constitution and article 40, paragraph 2 (b) (i), of the Convention.

266. Some judicial decisions in the Autonomous Communities refer expressly to the provisions and principles of the Convention. For example, a decision of 16 July 1996 of the Provincial High Court of Las Palmas refers expressly to the Convention in its explanation of grounds, stating that the children in question were clearly in a situation of desamparo and that it was impossible for them to rejoin their own family; it rejected the appeal lodged by the biological mother and confirmed the pre-adoption care order to which the children were subject. Other decisions of this Provincial High Court are based on the same argument.

F. Remedies available in cases of violation of the rights recognized by the Convention (CRC/C/58, para. 16)

1. Measures adopted by the State

267. Since the Spanish Constitution contains a broad range of fundamental rights which of course are accorded to everyone, the safeguards of those rights apply equally to children.

268. The fundamental rights and the principle of equality are guaranteed by the preferential and summary procedure referred to expressly in article 53.2 of the Constitution and embodied in Act 62/1978 of 26 December on the jurisdictional protection of the fundamental rights of the person.

269. There is also the possibility of submitting an amparo application to the Constitutional Court pursuant to articles 42, 43 and 44 of the Constitutional Court (Organization) Act (2/1979 of 3 October) when the violation of the fundamental right arises from an act or omission of a public authority, be it legislative, executive or judicial.

270. Article 10 of the Protection of Minors Act establishes the measures for facilitating the exercise of minors' rights. In defending and safeguarding these rights a minor may:

(a) Request the protection and guardianship of the competent public body;

(b) Report to the Government Prosecutor's Office situations which he considers to be infringing his rights in order that appropriate action may be taken;

(c) Submit his complaints to the Ombudsman;

(d) Request social assistance from the public authorities.

Article 13 includes among the duties and obligations of citizens the duty of reporting to the authorities any situation of desamparo so that the authorities can take the necessary corrective action.

271. Aside from the remedies available in domestic law in the event of violation of the rights recognized in the Convention, it is also important to draw attention to the remedies available under international public law.

272. Some of the international agreements provide the possibility for an individual to submit a complaint against his State to an ad hoc committee set up for this purpose if he thinks that the State has infringed the rights accorded to him under an international agreement to which it is a party.

273. This applies in Spain to the Optional Protocol to the International Covenant on Civil and Political Rights of 16 December 1966 and to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, of 15 December 1989. The same situation has arisen with respect to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, because at the time of its ratification Spain declared its acceptance of article 22.1, with the result that the Committee against Torture may receive and consider communications from persons subject to Spanish jurisdiction, or on their behalf, alleging that they are victims of a violation by the Spanish State of the provisions of the Convention.

274. However, communications from individuals to the Human Rights Committee or the Committee against Torture definitely do not constitute individual applications to an international court, with the guarantee of human rights that such applications would entail.

275. The European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on 4 November 1950, envisages in article 25 the possibility of petitions being submitted by any person, group of persons or non-governmental organization reporting a violation of the protected rights by one of the States parties.

276. The ratification by Italy on 1 October 1997 completed the ratification process of Additional Protocol No. 11 to the European Convention. In accordance with its provisions this Protocol entered into force generally and for Spain on 1 November 1998. The Protocol replaces the former arrangement with a new judicial system in the shape of the European Court of Human Rights, which functions on a permanent basis with mandatory jurisdiction.

277. This means that if the Spanish State is considered to have violated any of the children's rights protected in the European Convention with respect to any child (Spanish, foreign or stateless, provided that the child is under Spanish jurisdiction), from November 1998 a petition may be submitted, once all domestic remedies have been exhausted, directly to the European Court of Human Rights.

2. Measures adopted by the Autonomous Communities

278. In addition to the remedies available at the State level, the Autonomous Communities have created independent agencies and organs, which will be discussed later, to which application may be made in the event of violation of the rights recognized in the Convention or in the Communities' own legislation.

G. Steps taken or envisaged to adopt a comprehensive national strategy for children in the framework of the Convention and the goals established (CRC/C/58, para. 17)

1. Measures adopted by the State

279. It was pointed out in section B.1 of the Introduction to this report (Policies for children in the 1990s) that the main features of the situation of children in Spain and policies for children in the 1990s had been set out in the National Programme of Action for Children in Spain in the 1990s in fulfilment of the commitment made at the World Summit for Children.

280. The main features of this Programme of Action are described in section B.1 of the Introduction.

2. Measures adopted by the Autonomous Communities

281. The extensive development of law in the Autonomous Communities over the past two decades, described in section I.B above, has had and continues to have a political effect on their programmes of action for children.

282. In addition to the social action plans which ensure access for all citizens to the benefits of the (national) Public System of Social Services, several of the Communities included a programme of action in their specific legislation on children. Some of these programmes are already in operation, while others are at the drafting stage or awaiting implementation.

283. These programmes give effect to the measures which have been or will be adopted by the autonomous administrations to ensure the effective exercise of the rights of the child contained in State and autonomous legislation, with special emphasis on children with social problems.

284. In general terms the programmes seek:

(a) To improve the quality of the system of social protection of children and the protection measures, as well the institutions and services of the Public System of Social Services;

(b) To boost the development of coordinated networks of institutions and services. Special attention is given to coordination with the health agencies in order to deliver, for example, health care for foreign children, hospital care in conformity with the European Charter for Children in Hospital, suitable treatment for child drug addicts, special treatment for children with AIDS, appropriate mental health care, and appropriate measures for the detection and handling of cases of maltreatment. The coordination with the education system seeks to ensure sufficient coverage of primary education, incorporate education for health, combat discrimination, monitor truancy, and ensure effective detection of maltreatment. Many of the programmes address the technical and organizational arrangements for coordination of the care provided by the health and education systems, the social services, the justice system and the police in cases of maltreatment;

(c) To ensure the prevention, early detection and correct handling of situations of risk, maltreatment and desamparo;

(d) To prevent and deal with cases of conflict with the justice system by establishing a sufficient network of resources for effective social reintegration and alternatives to placement in an institution;

(e) To promote children's integrated development and quality of life in all social circumstances;

(f) To encourage and support families and the reintegration of children in their families as the first option;

(g) To help children aged 16 to 18 to find jobs;

(h) To encourage the participation of social organizations in the formulation and implementation of policies for children;

(i) To develop systems of information and research on children and the family.

285. Attention may be drawn to:

The integrated programme for children which Andalusia plans to adopt;

Aragón's integrated programme for children (1994-1997);

The Asturias regional programme for children (1996-1999);

The integrated programme of action for children at risk of the Balearic Islands;

The integrated programme for children of the Canaries, which is part of the general social affairs plan and awaiting adoption;

The regional social action plan of Castile-La Mancha, which seeks, among other aims, to make the social services more accessible in rural areas;

The integrated programme of action for children (1999-2002) of Castile-La Mancha, currently at the drafting stage;

The regional plan for the protection and care of children (1995-1998) of Castile and León;

Catalonia's third social action plan (1997-2001). This interdepartmental children's plan will be initiated shortly;

The integrated action programme for children and the family of Extremadura, yet to be drafted;

Galicia's integrated plan for support of the family, which includes programmes on the protection of children (0-3 years), on children in need of social protection, and on children with social problems;

The sectoral children's plan of La Rioja, which is under preparation;

Madrid's programme of action for children, initiated in 1994;

The regional social welfare plan introduced in Murcia in 1995, which set the goal of providing comprehensive care for children in 1995-1997. The plan for 1998-2001 is under preparation.

The plan for social and educational work with children, young people and families of the fuero office of Vizcaya, Basque Country;

Valencia's autonomous programme for the protection of minors, produced in 1996.

3. Measures adopted by social organizations

286. A number of social organizations, which have been working hard in Spain for some years for the defence and promotion of children's rights and had already participated in the preparation of the initial report, established themselves legally as the Platform of Children's Organizations to mark Universal Children's Day on 20 November 1997.

287. The Platform's purpose is to formulate and sponsor a global strategy for the promotion and protection of the rights of the child which will be distinct from the independent strategy of each NGO. The constitution of the Platform itself is part of this strategy.

288. The following are the Platform's specific goals: to support the general and sectoral policies for enhancing the well-being of children, especially children in situations of personal or social risk; to report and follow up all infringements of children's rights by public or private institutions or by individuals; to increase society's awareness of the need to know and respect the rights of the child; to develop dialogue, collaboration and participation in all public and private bodies which have or may have an influence on the well-being of children or on the exercise their rights; to encourage participation and the formation of children's associations in all organizations committed to improving the exercise of children's rights and the quality of their lives.

289. The Platform also seeks to maintain a permanent and constructive dialogue with the Administration with a view to monitoring public policies and making proposals thereon.

290. In this connection the Platform has stressed at numerous meetings with the Administration the need to create a national framework and global strategy setting out a policy and a comprehensive programme for children - which the Platform believes not to exist at present. This comprehensive programme is one which might ensure the proper implementation of the Convention.

291. The following organizations are currently members of the Platform:

Association of Children's Villages S.O.S. of Spain

Association for Democratic Education (AEDE)

Association of Messengers of Peace

Spanish Committee for UNICEF

Youth Red Cross

Federation of Scouts Associations of Spain (ASDE)

Federation of Associations for the Prevention of Child Abuse (FAPMI)

ANAR Foundation (Care for children and adolescents at risk)

Cooperation and Education Foundation (FUNCOE)

Foundation for Family Culture, Leisure and Nature (FONAT)

Spanish League for Popular Education and Culture

Junior Movement for Catholic Action

PRODENI (for children's rights), Madrid

292. Membership of the Platform is open to other Spanish organizations working with children.

293. Within the general framework of its strategy the Platform has carried out a number of activities connected with the promotion of the rights of the child:

(a) Activities connected with the right to participate and to form associations:

- (i) Creation of a working group on participation by children;
- (ii) Participation in the conference on "Evolution of children's role in family life: participation and negotiation" organized by the Council of Europe and Spain's Ministry of Social Affairs in December 1994;
- (iii) Participation in the seminars organized by the European Consortium and sponsored by the International Catholic Child Bureau (ICCB) in Madrid (1996) and Vienna (1997) on the topic "Education for communication between children and adults: participation, rights and responsibilities";
- (iv) Participation in the first children's forum at the European Parliament, organized by ICCB;

(b) Active participation in and support of the European Children's Network (EURONET), a network of European organizations advocating that the Treaty of the European Union should expressly recognize the rights of children and young people;

(c) Implementation of measures to combat unlawful interference in the private lives of children, including a proposal that the Government Prosecutor's Office should issue the necessary instructions for the protection of children's rights to privacy and their own self-image;

(d) Conduct since 1997, in four working groups, of a study on the extent of the application of Spain's legislation and the possible existence of gaps in the law affecting the principles and provisions of the Convention. The Platform organized meetings in June 1998 to discuss the conditions and difficulties of fulfilling the obligations deriving from the Convention;

(e) Collaboration with the Ministry of Labour and Social Affairs to organize a Child Labour Day in Madrid in April 1998 to mark the World March against the Exploitation of Child Labour.

294. The organizations members of the Platform which run children's centres produce their own periodic work plans.

295. On the occasion of various general, autonomous and municipal elections some of the Platform's organizations have urged the political parties to take children's interests and rights into account in their election programmes.

H. Existing or planned mechanisms at the national, regional and local levels for ensuring implementation of the Convention, for coordinating policies relevant to children and for monitoring progress achieved

(CRC/C/58, para. 18)

1. Measures adopted by the State

296. The information given in earlier paragraphs should be borne in mind with respect to the mechanisms for ensuring implementation of the Convention and for coordinating policies relevant to children.

297. Other specific measures adopted for this purpose are described below.

298. Agreement on principles for the self-regulation of television networks: this Agreement regulates certain programme content with an eye to the protection of children and young people and was drawn up in March 1993 by the Ministry of Education and Science, the education departments of the Autonomous Communities, and the television networks. It illustrates the role which Spanish society assigns to television in the socialization of children and the importance of promoting values consistent with children's needs and rights.

299. Proposals of the Special Senate Committee on Television Programming: this Committee was set up in 1993 to examine the content of television programmes in several respects: compliance with the fundamental legislation, protection of children's privacy and rights, respect for ethical values, responsibility for programmes intended for children or broadcast during what is regarded as children's viewing hours, and television as a medium for promoting life styles and behaviour. The Committee examined from the legislative, educational and cultural standpoints such matters as the protection of children against specific programme content, children's programmes, the right to privacy, and educational television; it then made proposals in these areas. Specifically, it submitted to the Senate a proposal for the creation of a higher council on the audiovisual media, indicating that its functions should include verification of compliance with the law, ethical codes and current regulations, provision of advice on controversial issues, production of reports and studies, definition of programmes suitable

for classification as acceptable, promotion of the notion of public service, setting limits to advertising, and educational work to contribute to the formation of standards and opinions.

300. Spain is following closely the European Strategy for Children of the Council of Europe. This Strategy originated in resolution 1011 (1993), in which the Parliamentary Assembly of the Council of Europe urged member States to subscribe to the principle of "first call for children", to show their clear recognition of the rights set out in the Convention on the Rights of the Child and of their universality and indivisibility, and to provide for the essential needs of children both in Europe and in the rest of the world.

301. A first outline of the Strategy was contained in the Joint Declaration of the Social, Health and Family Affairs Committee of the Council of Europe and UNICEF in June 1994. The Declaration assigned to the Convention a central role in policy formulation and implementation and called for political priority to be given to children. The joint work done by the Committee and UNICEF on the basis of the Declaration, together with the contributions of a number of European experts on children's rights, led to a report on a European strategy for children, which the Committee submitted to the Parliamentary Assembly in December 1995.

302. This joint work culminated in January 1996 when the Parliamentary Assembly adopted recommendation 1286 (1996) on a European strategy for children. In this recommendation the Assembly noted that the rights of the child were still far from being a reality in Europe and that children were often the first victims of armed conflicts, economic recession, poverty and in particular budgetary constraints. The Assembly recommended that the Committee of Ministers should urge the member States to ratify the Convention on the Rights of the Child and the Council of Europe conventions on the rights of the child and to make children's rights a political priority. One of the strategies of this priority would be to appoint a commissioner for children or a similar post. The Assembly also suggested that recommendation 1286 should be transmitted to the closing conference of the Multidisciplinary Project on Childhood Policies.

303. In the collaboration agreement signed at the time by the Ministry of Social Affairs and the Spanish Committee for UNICEF the two institutions committed themselves to work together on the development of initiatives for the implementation of the Strategy for Children.

304. Follow-up of the Multidisciplinary Project on Childhood Policies of the Council of Europe: up to 1996 Spain monitored and actively participated in the Project on Childhood Policies adopted by the Committee of Ministers of the Council of Europe in its intergovernmental programme of activities for 1992, thus bringing policies for children clearly within the scope of the Council of Europe as one of the challenges facing European society on the road to a common social space. Spain attended the Project's closing conference, held in Leipzig, Germany, in 1996, which focused on the topic of children's rights and policies for children in Europe.

305. The international conference on "Evolution of children's role in family life: participation and negotiation": the Ministry of Social Affairs, in collaboration with the Council of Europe, held this conference in Madrid in December 1994 as part of the International Year of the Family. The conference discussed in depth the various aspects of children's participation in the family and of negotiation as a means of tackling and resolving conflicts. The active part played in the conference by many groups of children and adolescents underlined their capacity to participate with adults in various areas and confronted the adults with the challenge of incorporating in their dealings and relations with children the right to participation recognized in the Convention. The conference also made a contribution to the Project on Childhood Policies of the Council of Europe. The findings of this

conference were taken into account in the preparation by the Council of Europe of a draft recommendation on children's participation in the family and in social life.

306. In December 1995 the Ministry of Social Affairs organized in Madrid a seminar on policies for children in Europe. The Madrid Declaration produced as the final document of the seminar followed the lines of the recommendations included in the European Strategy for Children and called upon the Committee of Ministers itself to play an active part in the promotion of the rights of the child and in monitoring the progress made.

307. Collaboration with the European Consortium on Education for Communication between Adults and Children. Participation: rights and responsibilities. This project is an initiative of the International Catholic Child Bureau (ICCB) in collaboration with the European Commission and the Council of Europe as part of the promotion of policies for children in Europe based on the Convention on the Rights of the Child. Spain was regularly represented at the meetings held by the Consortium, and in 1996 the Ministry of Social Affairs provided technical and economic support for the convening in Madrid of the first annual European seminar on "Education for communication between adults and children".

308. As far as departmental jurisdiction is concerned, Royal Decree 1888/1996 of 2 August established the basic structure of the Ministry of Labour and Social Affairs, including the Office for Social Action, Children and the Family, which is responsible within the Secretariat for Social Affairs for inter alia the analysis, preparation, coordination and monitoring of programmes of action for the promotion and protection of children and the family and the prevention of social problems affecting them, as well as for the analysis and monitoring of the application of the legislation on the protection and advancement of children and the family.

309. Coordination between the General Administration of the State and the autonomous administrations is conducted under the following arrangements:

(a) Sectoral conferences: these meetings are attended by the Ministry and the social affairs departments of the Autonomous Communities;

(b) Meetings of directors-general: these periodic meetings are attended by the Director-General for Social Action, Children and the Family and the directors-general responsible for children's affairs in the Autonomous Communities;

(c) Autonomous Community technical committees: periodic technical meetings convened by the Office for Social Action are attended by technical officials from the Autonomous Communities. They deal with matters on which decisions have been taken or are to be taken by the directors-general and produce technical analyses of the various issues arising in connection with the care and protection of children;

(d) Technical consultation: regular contacts between technical officials of the departments concerned.

310. The General Administration of the State, specifically the Office for Social Action, maintains regular contacts with the Platform of Children's Organizations and with the NGOs which respond to the annual invitation to apply for grants. The Platform took part in the preparation of this report.

311. Article 54 of the Constitution establishes the office of Ombudsman (Defensor del Pueblo) as an institution responsible for the defence and promotion of rights. The office of Ombudsman was the subject of Organizational Act 3/1981 of 6 April.

312. The Ombudsman is a Parliamentary Commissioner; he is elected by Parliament for a five-year term. His legal status means that he does not have to take orders from any other agency and that he also enjoys immunity, inviolability and other privileges. He is empowered to investigate, either of his own accord or on request, any activity of the Administration and its agents having an effect on the people. He may suggest in this connection the modification of the criteria used in the production of acts and resolutions of the Administration or to suggest to the Legislature or the Administration the modification of a specific regulation whose strict application may entail injustice or harm to the people. The Ombudsman must give an account of his activities in a report to Parliament in ordinary session.

313. Article 10.2 (c) of the Protection of Minors Act, which deals with measures to facilitate the exercise of the rights of the child, stipulates that an Assistant Ombudsman shall be permanently responsible for children's affairs and that children may submit their complaints to him in defence of their rights.

314. The Ombudsman has so far played an important role in the submission of recommendations to the various public administrations on measures which directly or indirectly protect children's rights. Attention must be drawn to the important work done in the award of scholarships and education grants, the establishment of common criteria for the whole country for the admission of pupils to schools, the protection of minors at frontier crossings, the amendment of the Criminal Code with respect to crimes committed against minors, the award of large-family status to families with two or more dependent disabled children, the waiting period in adoption proceedings, the extension of the age limit for paediatric care to 14 years, etc.

315. With regard to systems of information about children, section B.3 of the Introduction describes the Data Bank on the Protection of Children, the Children's Watch, and the system of information on users of the social services, which are mechanisms for the systematic collection of data on children.

316. The Office for Social Action, Children and the Family is also operating a studies and research project to provide this kind of information.

317. The purpose of this project is to determine, collect and produce indicators and information on the situation and needs of children and the family and on the position of the community social services, NGOs and foundations, as well as on the care provided for vulnerable social groups. This information may be useful for decision-making and the planning of programmes and services and thus for the matching of resources to the real needs of the population at social risk.

318. The project has several goals: to encourage research on children; to establish links between social service professionals and the scientific community in the area of applied research for purposes of the continuous study, monitoring, evaluation and modification of the programmes for children with social problems; to examine and assess the studies and research carried out both nationally and internationally; to offer advice and technical support to professionals working with children and in the social services; to maintain a network of social service researchers; and to maintain relations with national research centres and networks, thus providing a linkage to the national institutions.

319. The following areas of research on children and the family are being supported:

(a) Children's needs and rights: studies on children's needs with a view to ensuring their proper development and the promotion and protection of their rights as active members of society. Research is being undertaken in the following fields: people's attitudes and knowledge, the perceptions and knowledge of children themselves, patterns of upbringing and parent-child relations, and children and the communication media;

(b) The family in Spain: studies on the socio-demographic and psycho-social changes in the structure and dynamics of the family in Spain and in comparison with the rest of Europe. The current research is focusing on social changes in the family and in its needs;

(c) Children and families with social problems: studies of risk factors and protection measures in connection with risk situations in general and domestic violence in particular. Consolidated research is currently being conducted on the maltreatment of children, covering the epidemiological aspects, prevention programmes, and the protection system.

320. Table 1.1 in annex A lists the research on children carried out in recent years, some of which has been published.

321. The preparation of Spain's initial and second reports on its application of the Convention has constituted the most systematic procedure for evaluation of the progress made.

2. Measures adopted by the Autonomous Communities

322. As pointed out earlier, pursuant to article 148.1.20 of the Constitution, which states that they "may assume jurisdiction in matters of social assistance", the Autonomous Communities have been performing functions in the area of the social protection of children previously the responsibility of the General Administration of the State.

323. In fact, as mentioned in the Introduction to this report and in accordance with their respective statutes of autonomy, the Communities have been regulating the care provided for children with social problems in their own social services acts and other legislation. They have established a network of standardized and specialized facilities in specific departments of various administrative agencies, and this network provides a set of protection measures. The Communities which cover several provinces have provincial offices in the agencies concerned.

324. These offices deal with and regulate, with varying degrees of detail and precision, matters connected with the protection of children and families, the management, systems and operation of the institutions and establishments for the protection and guardianship of minors, and in some cases the protection of the rights of the child.

325. The municipalities play an essential role in the establishment of measures for the protection of children, especially in the case of children experiencing social problems. The provision of social services in the municipalities, within the framework of the Concerted Plan for the Development of Basic Social Services and in conjunction with the corresponding participating organizations, is fundamental to the protection of children.

326. The autonomous legislation establishes the arrangements for coordination in each Community between the governmental agencies having responsibility for policies for children and the municipalities and their social services, specifically between the social services specializing in children's affairs, which answer to the autonomous authorities, and the basic social services, which answer to the municipality.

The children's programmes which some of the communities are carrying out or preparing also establish arrangements for proper coordination.

327. When it comes to the promotion and monitoring of the application of the Convention, the governmental agencies of the Autonomous Communities responsible for children's affairs obviously contribute to the promotion of the rights of the child when they provide resources and services for the protection of children with social problems.

328. However, aside from the basic structure established in all the Autonomous Communities, some of them have created institutions or services with more concrete and specific functions in the promotion of children's rights and in the coordination and guidance of the various agencies having responsibility for children. Attention may be drawn to:

(a) Andalusia's Council on Children's Affairs, a consultative and advisory body, and its regional and provincial councils, which are functional and coordination bodies;

(b) The proposed children's institute in Aragón;

(c) The official Children's Ombudsman of the Social Welfare Council of Asturias;

(d) The Office for the Defence of the Rights of the Child of the Balearic Islands, which was set up in 1997 and numbers among its functions interdepartmental coordination and the production of an annual report to the Council of Government and the Autonomous Parliament, and the Inter-Island Committee on the Protection of Minors, which also has coordination functions;

(e) The Inter-Administration Committee on Minors of the Canary Islands, made up of representatives of the autonomous administration and the local municipal corporations, and the Committee on Minors created by the General Social Services Council, which performs training, study and advisory functions and is made up of representatives of public administrations and social and professional organizations;

(f) The provincial coordination committees for the care of children in Castile-La Mancha, made up of representatives of the social, health, local government and education services and local councils and corporations;

(g) The Provincial Committee on Minors of Castile and León;

(h) Galicia's Interinstitutional Committee on Minors and the provincial interinstitutional technical committees;

(i) The Sectoral Council on Children and Adolescents of La Rioja, which was set up in February 1998 to promote the social integration of children and operates as a mechanism for participation by society in matters connected with the social services;

(j) Madrid's Institute for Children and the Family;

(k) Article 96 of the Basque Country's bill on the care and protection of children and adolescents to safeguard the exercise of their rights and responsibilities, which provides for the creation of an inter-administration committee on the care of children and adolescents;

(l) The governmental Commissioner for the Protection of Minors of Valencia.

329. In the autonomous administrations cooperation with NGOs and other social organizations and projects is achieved by means of the annual invitation to apply for funds for programme implementation, and through collaboration agreements on project management and implementation within the jurisdiction of the Autonomous Communities (social work with families, sheltered accommodation, family-centre programmes, programmes for the prevention of maltreatment, etc.), committees to monitor plans and programmes, coordination with the collaborating international adoption agencies and with collaborating family integration institutions (which work as mediators in adoption and fostering procedures), cooperation and participation in the formulation of training and awareness plans and programmes to educate the population at large about the rights of the child, membership of governmental organs, and provision of technical support.

330. Children may submit their complaints, either in person or through representatives, to the following independent organs for the protection and promotion of the rights of the child:

(a) Andalusia's Children's Ombudsman, who is an Assistant Ombudsman of Andalusia;

(b) The Judiciary of Aragón;

(c) The Ombudsman (Diputado del Común), a high commissioner of the Canaries Parliament responsible for the defence of the fundamental rights and freedoms of the people, who deals with cases involving children and has already submitted to the regional Parliament two reports on the situation of children;

(d) The Madrid Ombudsman, a high commissioner of the Madrid Assembly;

(e) The Assistant Ombudsman for Children (Sindic de Greuges) of Catalonia, who submits an annual report to the regional Parliament;

(f) The Ombudsman (Valedor do Pobo) of Galicia, who assigns responsibility for defence of the rights of children and adolescents to one of his deputies;

(g) Article 87 of the Basque Country's bill on the care and protection of children to safeguard the exercise of their rights and responsibilities contains a specific section on the protection of children's rights by the Ombudsman (Ararteko), who submitted to the Basque Parliament in 1997 a special report on the care of children in need of protection.

331. As explained in section B.2 of the Introduction, the Autonomous Communities are taking an active part in the establishment of the Data Bank on the Protection of Children and the Children's Watch of the Office for Social Action, Children and the Family, as well as in the introduction of the Social Card and the system of information on users of the social services.

332. In addition, some of the Autonomous Communities are developing their own centralized databases, information systems and specific registers (for example, on protection measures and adoption waiting lists); in some cases this has led to the creation of a children's watch, as in Andalusia and the Balearic islands, or a family watch, as in Galicia.

333. The autonomous public institutions responsible for statistics also collect data on children.

334. Some of the Autonomous Communities have produced maps of the territorial distribution of children's problems and needs resulting from family poverty, with an indication of the existing and the

needed resources, as well as diagnoses of the situation of children in the region in question, analyses of the risk factors affecting the exercise of their rights and studies of the care which they receive in the protection services. Some of this research has been promoted by independent human rights organizations, as mentioned earlier, and some by autonomous institutions responsible for children's affairs. In many case these maps and studies have constituted the database and technical underpinning for the formulation and introduction of programmes for children. Many of the measures for children are assessed as part of the overall assessment of their social services programmes by the Autonomous Communities.

3. Measures adopted by local corporations

335. Many of Spain's local corporations and town councils are very much in favour of publicizing the Convention and the rights of the child and of carrying out measures for the protection and promotion of these rights.

336. They are responsible for providing all citizens with the primary services and benefits under the Public System of Social Services referred to in section B.3 of the Introduction.

337. Several of them have formulated and implemented municipal children's programmes. Several have set up municipal councils on children as organs in which children themselves can participate. Others have created children's offices.

(a) World initiative of mayors for children's rights

338. In September 1991 mayors from all over the world came together at a meeting in Rome to learn about the experience of Italian mayors as defenders of children's rights under a project initiated in 1990; the meeting produced the Rome Declaration.

339. The mayors met again at an international colloquium in Dakar in January 1992 and produced the Dakar Declaration, in which they designated themselves protectors of children's rights, approved the Declaration and Plan of Action of the World Summit for Children held by the United Nations on 30 September 1990, and undertook to contribute to the fulfilment in their respective jurisdictions of the promise made to the world's children at the Summit and embodied in the Convention on the Rights of the Child. The mayors' project on the protection of children was officially launched at this colloquium in Dakar.

340. In October 1993, within the framework of this movement, the mayors of several Spanish municipalities met in Pamplona and produced the Pamplona Manifesto, in which they undertook to work for the well-being of children on the basis of the principles of the Convention and of comprehensive programmes of action in whose formulation and implementation NGOs and children themselves would participate. The Manifesto contains a commitment to publicize the Convention in compliance with the undertaking to do so given by Spain at the World Summit.

341. In 1995 the executive committee of the Spanish Federation of Municipalities and Provinces (FEMP) adopted an agreement endorsing the Dakar Declaration and undertaking to publicize its contents and propose its endorsement by local corporations.

342. Both the Dakar Declaration and the FEMP agreement underline the importance of local involvement in the formulation and implementation of integrated policies for children.

(b) Network of municipalities for children's rights

343. In January 1996 representatives of the General Administration of the State, together with mayors and other holders of public office, launched a project for the creation of a network of municipalities as a means of reciprocal support and reinforcement based on the exchange of experience of preventive measures and integrated policies for children. The project gives close attention to the local context as the most suitable space for formulating and executing such measures and policies. The town councils involved undertook to promote and protect children's rights and to produce integrated plans giving priority to preventive and care measures for children with social problems. They gave an explicit commitment to involve children in the decision-making process.

4. Measures adopted by social organizations

344. One of the functions of the Platform of Children's Organizations, already mentioned in section G of this chapter, is cooperation and the conclusion of collaboration agreements with the public authorities on the implementation of programmes funded by them for the defence and promotion of rights, the conduct of training activities, and the production of technical reports on various topics (impact of the application of the General Education (Organization) Act, child labour, quality standards in the residential care of maltreated children, juvenile justice bill).

345. The Platform seeks to gather information on the situation of children in Spain in addition to the information, research and documents produced by each of its member organizations. In this connection some of the Platform's members have reiterated to the Administration the need to start-up the planned Children's Watch as an agency for monitoring observance of the rights of the child.

346. Some of the organizations have already been promoting the introduction of programmes for children and young people by town councils and the Autonomous Communities, as well as taking part in such programmes as already exist.

347. Some of the universities of Andalusia, Catalonia, Madrid, the Basque Country, Castile and León, and Valencia have departments which have been conducting research and teaching in recent years on topics connected with children and their rights. Over the past five years the Ministry of Labour and Social Affairs has been carrying out a policy of technical and financial collaboration with these departments on the development of several projects:

(a) Production of materials for the identification, notification, investigation and evaluation of maltreated children. These materials are used by the technical personnel for child protection of the Autonomous Communities;

(b) Formulation of a plan for the training of trainers, together with the teaching modules and the corresponding materials to be used in the training of the technical personnel of the Autonomous Communities;

(c) Several studies on the maltreatment of children;

(d) National research on sexual abuse;

(e) Research on the tasks and critical situations confronting professionals working in the System of Social Care for Children (SASI);

(f) Study on the social situation of the family;

(g) Research on the psychological, social and biological development of children living in prison with their mothers.

348. A number of research teams from five Catalonian universities have created an interdisciplinary network to encourage the production and exchange of information about children's rights and their quality of life.

I. Initiatives taken in cooperation with civil society and mechanisms to evaluate the progress made (CRC/C/58, para. 19)

349. See sections G, H and M of this chapter.

J. Measures to ensure the implementation of the economic, social and cultural rights of children at the national, regional and local levels (CRC/C/58, para. 20)

1. Measures adopted by the State

350. The tables in annex A include data on public expenditure on children.

(a) The National Programme of Action

351. Spain's National Programme of Action for Children in the 1990s, referred to in section B.1 of the Introduction and in section G of this chapter, refers in all its subject areas to the principal strategies and measures having an impact on children's lives in the various sectors of social policy and sets out the corresponding arrangements for coordination of economic and social policies.

(b) The System of Social Care for Children

352. The System of Social Care for Children (SASI), described in section B.2 of the Introduction, is made up of a coordinated network of services designed to guarantee the economic, social and cultural rights of children with social problems.

(c) The Public System of Social Services

353. Children and families with social problems constitute one of the target groups of the services and benefits provided the Public System of Social Services, mentioned in section B.3 of the Introduction. This System is funded, as already mentioned, under the Concerted Plan for the Development of Basic Social Services of Local Corporations.

354. In 1996, the latest year for which information is available, 15 Autonomous Communities signed agreements, action was taken in 6,166 municipalities (82 per cent of the total), and the credits committed by the three administrations amounted to 63,835,295,787 pesetas.

(d) Grants to NGOs for social programmes

355. Royal Decree 825/1988 set out the mandatory social purposes of the allocation of revenue from personal income tax. On this basis, every year the Ministry of Labour and Social Affairs invites applications for assistance and grants from these tax funds for the implementation of cooperative and voluntary social programmes designed to tackle situations of need and/or marginalization.

356. The programmes supported include a number for children and families:

(a) Programmes designed to facilitate the harmonization of family and working life;

(b) Programmes to enhance children's quality of life;

(c) Programmes on residential facilities for children in situations of social difficulty or conflict and experimental programmes on the use of alternatives to placement for such children;

(d) Programmes to encourage the fostering of children in official guardianship;

(e) Programmes on the prevention of maltreatment and on the care of maltreated children;

(f) Programmes on the prevention and eradication of child labour;

(g) Programmes on intervention in families with social problems or at risk of social exclusion;

(h) Programmes on intervention in families victims of violence.

357. The Ministry also provides grants from budgetary funds under its general grants schedule.

358. Where children are concerned, these funds are allocated to:

(a) Programmes to promote the formation of children's associations and children's participation;

(b) Maintenance and investment programmes for organizations working specifically for children;

(c) Programmes to encourage the personal independence of adolescents released from residential facilities and help them to take their place in society and find jobs.

(e) Other programmes

359. Other programmes having an impact on children are carried out under cooperation and co-financing agreements between the Ministry and the Autonomous Communities; these programmes are monitored by committees made up of representatives of the Ministry, the Autonomous Communities, and the Spanish Federation of Municipalities and Provinces.

360. The programme on social exclusion has the general aim of tackling a number of problems (economic, social, cultural, educational, health, etc.) exhibited by persons suffering social exclusion and of facilitating their social integration. It operates in vulnerable urban areas and areas experiencing serious problems of social integration by means of comprehensive measures in the spheres of education, vocational training and jobs creation, health, social work, housing and shelter. It requires the cooperation and coordination of the institutions involved in the programmes and the participation of the target population. The Ministry contributes 50 per cent of the funding: 218 million pesetas in 1997 and 300 million in 1998. The credits committed by the administrations in 1997 totalled 642,566,956 pesetas.

361. Spain's gypsy community is its biggest ethnic and cultural minority; some members of this minority, and therefore some children, suffer unequal treatment and social marginalization with regard to the rest of the population and are sometimes subjected to acts of intolerance and rejection. This situation is manifested in their poor living conditions and unequal access to social resources, mainly housing, education, work, health, and social services.

362. A bill on an action plan was brought before Parliament in 1985 with a view to the formulation of policies to improve the situation of the gypsy minority. A credit of 500 million pesetas for implementation of this gypsy development plan has been included since 1989 in the general State budget. This credit is intended for the joint funding with the Autonomous Communities of integrated projects for the gypsy communities designed to improve their living conditions, facilitate their access to social facilities and services, establish channels for their participation in public affairs, prevent racist attitudes, and preserve and encourage respect for gypsy culture.

363. The projects coordinated by the social services include support for and monitoring of school attendance, education for health, training for work, social assistance, and rehousing in accommodation of acceptable standard. The projects may be managed by the Autonomous Communities themselves or by town councils. The communities and councils contribute at least 40 per cent and the Ministry 60 per cent of the projects' total cost.

364. A total of 108 projects involving 95 municipalities and about 15,000 persons was carried out in 1997; and the credits provided by the participating administrations amounted to 882,736,610 pesetas. In addition to this funding, grants totalling 492,600,000 pesetas were made to support the activities of NGOs and other social organizations.

365. Other chapters of the report describe other programmes on coordination of economic and social policies and provision of equal access for children to the benefits and services: programmes of assistance to disadvantaged families and families at social risk (ch. V.A); experimental programmes on maltreatment (ch. V.J); and programmes for the creation of social and educational services for children aged 0-3 years (ch. VI.C).

(f) International cooperation

(i) Framework and scope

366. Up to 1980 and 1981 respectively the International Monetary Fund and the World Bank regarded Spain as a recipient of development assistance. It was in the mid-1980s that Spain became a donor country and began to play an increasingly active role in international aid bodies.

367. The Secretariat of State for International Cooperation and Ibero-America (SECIPI) was established in 1985. The Interministerial Committee on International Cooperation began to operate in 1986 with the basic purpose of preparing an annual international cooperation plan; the original function of this interministerial planning exercise was to formulate a single policy (Royal Decree 451/1986). The first policy guidelines on international cooperation for development, approved in 1987, established Ibero-America as the priority area.

368. The Spanish International Cooperation Agency (AECI) was set up in 1988 as an independent body operating under SECIPI with the specific function of implementing a type of assistance - non-reimbursable - for all the geographical areas of the world receiving official development assistance (ODA).

369. Royal Decree 1141/1996 modified the structure of AECI and expanded development cooperation as a basic tool of Spain's foreign policy. Under this new structure, assistance for children is divided among the several areas and levels of AECI activity in all parts of the world, but the priority remains Ibero-America:

(a) Multilateral cooperation (with international agencies of the United Nations system, the European Union, DAC-OECD, regional and subregional organizations, etc.);

(b) Bilateral cooperation (governmental, non-reimbursable, agreements signed in joint committees, general treaties of cooperation and friendship, basic general agreements on scientific, technical and cultural cooperation, other agreements with specific scope and content, protocols and annexes establishing the legal framework for this cooperation);

(c) Support for development NGOs (through annual invitations to apply for funding: special financing from funds obtained from the 20 per cent of allocations from personal income tax revenues earmarked for social purposes, and regular financing, which was provided under the budget of the Ministry of Foreign Affairs up to 1997 but transferred to the AECI budget from the 1998 financial year);

(d) Activities funded through invitations to apply for non-specific permanent assistance;

(e) Specialized courses;

(f) Humanitarian, food and emergency aid;

(g) Invitation to apply for scholarships for students from Ibero-America, from countries of Asia, Africa and Oceania, and from Arab and Mediterranean countries; scholarships for Spanish students under the work experience programme, and for Spanish and Ibero-American students under the inter-university programme; short courses in collaboration with other ministries, etc.);

(h) One-off and ad hoc assistance;

(i) Collaboration agreements with other national and international bodies (on child labour policy, for example); the most important of these agreements is the annual one signed by the Ministry of Labour and Social Affairs, which links several European Union programmes under an additional protocol.

370. AECI also has a large network abroad: 29 technical cooperation offices, 12 cultural centres, three training centres, a special programme in Equatorial Guinea, and cooperation funds managed by 15 embassies in Arab countries.

371. The reference framework for priorities for children is established in a number of documents:

(a) Paragraph 31 of the report on the general aims of Spanish cooperation and development assistance policy approved by the Congress of Deputies on 26 November 1992 sets as one of the priority aims "assistance in situations of extreme poverty and especially for marginalized groups, such as women, children, ethnic minorities and displaced communities";

(b) Paragraph 3.9 of the report on Spanish cooperation and development policy approved by the Senate on 22 November 1994 stresses "the importance in development cooperation of the defence of the rights of the most disadvantaged and vulnerable people, especially women and children". At its meeting on 20 December 1994 the Judiciary and Interior Affairs Committee of the Congress of Deputies approved a bill on the protection of children which urged the Government to "promote programmes and finance projects for the protection of children in countries where they suffer violence and maltreatment" and to "work within the Ibero-American community of nations and at the annual Ibero-American summit meetings to promote concrete programmes of assistance for children affected by problems of marginalization, poverty and violence" in the region in question;

(c) Spain's development assistance and cooperation also takes into consideration the provisions of the Declaration of the World Summit for Children (New York, 1990), which states the commitment of the international community to protect working children and eradicate illegal work by children;

(d) Lastly, Act 23/1998 on international cooperation for development includes among its principles "recognition of the individual and collective dimensions of the human being as advocate and ultimate target of development cooperation policy" and "fulfilment of the commitments made in international bodies". Article 7 of the Act refers expressly among its sectoral priorities to "protection of and respect for human rights, equality of opportunities, the participation and integration of women in society, and the protection of the most vulnerable population groups (children, with special emphasis on the elimination of the exploitation of child labour, refugees, displaced persons, returnees, and members of indigenous and minority groups)".

(ii) AECI activities and the elimination of child labour

372. As part of its regular work AECI addresses the problem of child labour, both in its most extreme and aberrant manifestations and in its "socially tolerated" forms, as a complex phenomenon involving economic interests, political issues and cultural traditions. It advocates a multilateral reciprocal approach, in which the international community has a special responsibility for formulating policy and monitoring the implementation of resolutions, as well as for concrete development activities.

373. AECI has approached the problem of eliminating child labour in two ways.

374. Firstly, in the context of children's problems in general it approaches child labour as a cross-cutting issue which is gradually being taken up in all AECI activities (health, nutrition, infant mortality, and rates of school attendance and access to drinking water figure large in these activities). And in so doing it attends both to the priorities of ODA as an instrument of Spain's foreign policy and to its commitments to the United Nations system and DAC-OECD and as a member of the European Union (see table 1.10 in annex A).

375. Secondly, in support of the ILO International Programme on the Elimination of Child Labour (IPEC), initiated in 1992, on 22 March 1995 Spain signed a memorandum of understanding with ILO under which it undertook to contribute 12.5 million dollars over five years (2.5 million a year) to build up IPEC in Ibero-America.

376. IPEC encourages effective collaboration between State services, employers' organizations, trade unions, development NGOs and other sectors of civil society (universities, communication media, etc.) focused primarily on three priority groups: children subjected to forced labour, slavery or serfdom, children working in hazardous occupations or conditions, and children aged under 12 years, with account taken of the particular vulnerability of girls to sexual exploitation and abuse.

377. IPEC began operations in the region in March 1996 with the establishment of its technical support structure.

378. As far as possible it uses the AECI training centres for its training work and it has the services of associate experts, young professionals and United Nations volunteers funded by AECI, and of Spain's young aid workers programme. It enjoys the technical and administrative support of the 19 technical cooperation offices which AECI maintains in Ibero-America and also has a Spanish associate expert in San José, Costa Rica.

379. After one and half years in operation IPEC has a presence in all the countries of Ibero-America and has initiated some 200 activities, almost half of which are action programmes in individual countries. The working method is to set up national committees on the elimination of child labour (public and private sectors), to carry out awareness measures for the public at large, trade unions and businesses, to improve the information systems (national analyses and studies, standardization and organization of a regional information system), and to carry out active investigations, specific censuses and direct interventions. In November 1997 there were 80 programmes in operation for under-12s and children in very hazardous situations (slavery, forced labour, trapped in illegal activities connected with prostitution, drug trafficking, child pornography, etc.).

(iii) The operational tools

380. AECI has been carrying out the specific programmes and projects for children listed in table 1.10 in annex A.

2. Measures adopted in the Autonomous Communities

381. As already reported in paragraph 54 (b) of the Introduction, the social services acts of the Autonomous Communities, adopted pursuant to article 148.1.20 of the Constitution, and the Statutes of Autonomy themselves accord the right to social services to all Spanish residents in the territory in question; they also establish the arrangements for coordination of social and economic policies, lay down principles, and specify social protection measures and benefits and the network of facilities and services that make up the social services system for the whole country, with its primary and secondary levels of care, financed under the Concerted Plan described earlier.

382. Children and young people are mentioned in these acts as target groups for the social services.

383. In addition, the specific autonomous legislation on children, referred to in section B above, takes the best interests of the child as the basis for the formulation and implementation of protection policy. Some of the legislation assigns express budgetary priority to matters connected with the care, training, advancement, reintegration, protection, and leisure time of children and adolescents.

384. These acts establish all the necessary measures for ensuring the proper protection of all minors in the jurisdiction of the Community in question by means of the provision of social services and resources without discrimination with a view to the elimination of disparities.

385. One of the means of eliminating disparities used by some of the Autonomous Communities is the equitable geographical distribution of care facilities for children, which as specialized services are located on the basis of population numbers and density and of the needs.

386. Programmes on children are given priority in the annual allocation of economic assistance in some Communities.

387. The programmes on children and the social action plans referred to in section G above contain measures designed to secure equity in the delivery of social services for children and families, making provision in the budgets of the Autonomous Communities and elsewhere for economic benefits to mitigate deficits and difficulties or lack of financial resources to maintain and bring up children.

388. Some of the Autonomous Communities do not produce disaggregated data on children in their economic budgets. Obviously, the Communities which have not taken over responsibility for health and education from the State do not have the corresponding statistics.

389. Some Communities report increased budgeting for children in the period 1993-1997.

390. In other cases the upward trend in expenditure on children and families with children seen up to 1995 was reversed from that year, coinciding with the restructuring of the Public System of Social Services and the introduction of new benefits which do not have a direct effect on children but rather on the population groups in which the most seriously disadvantaged people are found.

K. Measures adopted as a follow-up to the Declaration and Programme of Action of the World Summit for Social Development and measures taken or foreseen to make the principles and provisions of the Convention widely known (CRC/C/58, paras. 21 and 22)

1. Measures adopted by the State

391. Although, as pointed out in section C.2 (b) of the Introduction, renewed progress is needed with regard to awareness of and recourse to the Convention, several measures have been adopted since ratification to publicize the Convention in society at large and to make the institutions themselves more aware of it.

392. Other more specific action has been taken in addition to the measures mentioned in section G above:

(a) The "Get to know children" campaign, referred to in paragraphs 22-26 of the initial report;

(b) The "Colour in your rights" campaign, initiated by the Ministry of Labour and Social Affairs in 1997 to mark the eighth anniversary of the Convention and carried out in collaboration with the Ministry of Education and Culture and the Platform of Children's Organizations, was aimed at 700,000 children and their teachers. Booklets and a teaching guide on children's rights were produced during the campaign to support the teachers' efforts and the children's artwork in the classroom;

(c) The travelling exhibition on the rights of the child, mentioned in paragraphs 52 and 53 of the initial report, is still operating and the materials produced to support it are still available;

(d) The annual celebration on 20 November of Universal Children's Day has been regarded as an opportunity to make people aware of the rights of the child and for the active involvement of children and children's organizations in commemorative activities. This annual commemoration is consistent with the commitment assumed by ratification of the Convention and at the World Summit for Children to give political priority to measures to promote and protect children's rights. Furthermore, both the General Assembly of the United Nations and UNICEF recommended that States should mark this Day, suggesting 20 November as the most suitable date as it is the anniversary of the adoption of the Declaration on the Rights of the Child in 1959 and of the adoption of the Convention;

(e) The seminar organized by the Ministry in 1998 in the Congress of Deputies in collaboration with the Congress and the Platform of Children's Organizations;

(f) The research and publications produced in recent years have played an important part in the dissemination of the principles of the Convention (see annex A, tables 1.1 and 1.2);

(g) Training activities:

(i) A seminar was held in 1994 in collaboration with the Ministry of Education and Culture with the basic objective of producing materials to make teachers more aware of the rights of the child and give them training in this subject;

(ii) For some years now the training plans produced by the Office for Social Action, Children and the Family for professionals in the Autonomous Communities have contained specific teaching modules on the various subjects covered by the Convention: civil rights, adoption and foster care, maltreatment, leisure time, juvenile offenders, and health (see annex A, table 1.12);

(iii) The Ministry of Labour and Social Affairs is providing financial and technical support to the Autonomous University of Madrid, the Community of Madrid, and the Spanish Committee for UNICEF for the development of a master's course in the needs and rights of the child. This course takes its objectives from the principles of the Convention in accordance with the provisions of article 42.

2. Measures adopted by the Autonomous Communities

393. In recent years the Autonomous Communities have undertaken many activities to publicize the Convention and its provisions, sometimes in collaboration with NGOs. The public promulgation of legislation on children in the Communities has often provided an occasion for publicizing the Convention itself.

394. Several of the autonomous children's acts, mentioned in section B above, expressly state the commitment of the authorities to take action to publicize the rights recognized in the Convention.

395. The Convention has been translated and distributed in bilingual Autonomous Communities: the Balearic Islands, Catalonia, Galicia, the Basque Country, and Valencia.

396. Several of the Communities have held days and other public events on the rights of the child, often in collaboration with their health and education departments, social organizations and university institutions, and in some cases with the participation of large numbers of children. Some have held special plenary sittings of Parliament, attended by children, to debate the rights established in the Convention.

397. As an expression of their concern about the role played by the communication media in society and in the development and education of children, some of the autonomous authorities have taken measures to address the potential opportunities and risks represented by the media and their role in the dissemination of the rights of the child.

398. In this connection the autonomous education authorities signed an agreement on the principles of the self-regulation of television networks, referred to earlier. The Journalists' Association of Catalonia adopted a code of ethics which addresses specifically the role of the media with regard to children.

399. Catalonia has an Audiovisual Council, an advisory body on the content of television programmes, which stresses television's impact on the behaviour of children and young people and monitors the objectivity and transparency of audiovisual programming.

400. There are television programmes dealing specifically with matters affecting children, such as the fortnightly "First Age" programme broadcast by Canaries Television.

401. The radio and the daily press also deal from time to time with children's issues.

402. The Autonomous Communities celebrate Universal Children's Day every 20 November. In some cases this Day is expressly established as such in the children's acts: for example, Children's Day in Andalusia and Children's Rights Day in Madrid.

403. In addition to participating in the training activities organized by the Office for Social Action, many Communities run their own training activities, which cover the State and autonomous legislation on children, the application of protection measures, and the conduct of public or closed judicial proceedings for juvenile offenders, as well as specific subjects such as maltreatment, foster care, etc.

404. These training activities have been attended by teachers from children's centres, professionals from municipal social services and the specialized services of the Autonomous Communities, education, health and justice professionals, police officers and foster parents.

405. Some of the communities have run courses on juveniles in the police training schools and seminars in university faculties of education, law and social work.

406. The primary and secondary school curricula in Valencia include under the subject "Social and environmental studies" a component on the rights of the child, a topic which is studied in all schools on Universal Children's Day through special activities, including pupils' participation in the drafting of a report on their rights.

407. The communities have also introduced a publications policy for the Convention and the rights of the child:

(a) Publication of the Convention in several of the communities;

(b) Production of posters commemorating Universal Children's Day for distribution in children's and cultural centres and in schools;

(c) Production of pamphlets on the rights of the child, sometimes including the text of the Convention;

(d) Publication of books on the rights of the child.

3. Measures adopted by local corporations

408. In addition to the measures mentioned in section H above, some local corporations engage in publicity in the form of special days and similar events in collaboration with NGOs; children are usually involved.

4. Measures adopted by social organizations

409. As already explained, social organizations working with children have played an extremely active role in recent years in the protection and promotion of children's rights and the publicizing of the Convention.

410. The organizations members of the Platform of Children's Organizations are involved in many of the measures taken by the authorities, as well as running other activities themselves:

(a) Publicity and awareness

(i) Participation in the preparations for and celebration of Universal Children's Day;

(ii) Stands at several of the locations used by the travelling exhibition on the rights of the child, referred to above, during the 1993-94, 1994-95 and 1995-96 school years in support of the competitions for schools organized by one of the Platform organizations under the programmes of education for development with a view to enhancing awareness and advertising the value of solidarity. In these competitions pupils do work connected with study of their rights and other learning activities; guidelines are provided for the teachers. The materials supplied to schools for the programmes of education for development include copies of the Convention and other materials referring to it. In order to achieve the greatest possible participation in visits to the exhibition, detailed information is supplied to the communication media and invitations issued to all schools, regardless of whether they are taking part in the programmes of education for development;

(iii) Celebration of the first European Children and Youth Week in Barcelona from 25 to 31 July 1994. The purpose of this event was to bring together European associations working directly with children and young people to debate topics affecting them and study the European Charter of Children's Rights and the Convention on the Rights of the Child;

(iv) Convening every two years of a national congress on maltreatment of children. The one held in Barcelona in October 1997 was a European event;

(v) One of the organizations has been submitting to the communication media reports on physical chastisement, armed conflicts, education, safety in kindergartens, and other subjects. These reports have always included many references to the provisions and principles of the Convention, together with an explanation of its legal importance;

(vi) As pointed out in section G, several of the Platform organizations have been taking part in Spain in the EURONET campaign to incorporate express recognition of the rights of children and young people in the Treaty of the European Union. During the campaign, children and young people wrote postcards with the inscription "You should be the first person to respect and get respect for your rights", and collected signatures and sent them off to members of parliament;

(vii) The "Barbie, UNICEF and you supporting children" campaign in collaboration with a commercial company;

(viii) The "Values at the cinema" programme carried out jointly by one of the Platform organizations and the Assistance to Fight Drug Addiction foundation;

(ix) The "America Wave" radio programme;

(x) The "Young people think" Internet site;

(xi) The international radio and television day for children (second Sunday in December);

(xii) One of the organizations has been promoting the Municipal Charter of Children's Rights, which includes a commitment by municipalities to publicize the Convention and celebrate Universal Children's Day;

(xiii) For several years now one of the organizations, in conjunction with several Autonomous Communities, has been running the schools programme "You learn to take part by taking part: know your rights", carrying out teaching activities which encourage critical thought, a proper balance between rights and responsibilities, better personal relations, independence, and learning by taking part.

(b) Training

(i) Seminars for the professional staff of the organizations;

(ii) Summer course on "Child labour" held in El Escorial by Madrid's Complutense University in conjunction with the Ministry of Labour and Social Affairs;

(iii) Conferences on the rights of the child as part of the training courses for volunteers working in the programmes on social training and education at home for sick children and in the leisure and free-time programmes run jointly by two of the organizations. Copies of the Convention are distributed at these conferences;

(iv) Conferences on the principles of the Convention run by technical staff from one of the organizations;

(v) The project "Make sure your rights are observed" operated jointly by two of the organizations since 1995 includes educational topics related to the rights of the child: environmental education, education for peace, education for equality, and education for participation;

(vi) Programmes of education for development (see above). These programmes are officially recognized by the Ministry of Education and Culture;

(vii) Educational materials produced in collaboration with the General Secretariat for Gypsies association: programme to develop tolerance and respect for diversity in compulsory secondary education;

(viii) Schools and courses for members of parents' associations, which include the distribution of teaching materials on children's rights, run by the Spanish Confederation of Parents' Associations;

(ix) Training courses for trainers run by the same Federation for members and technical personnel of parents' associations;

(x) Adult awareness and training course run by one of the organizations from 1992 to 1995 for professionals working with children;

(c) Activities and events in various social communication media, coinciding with the anniversary of the adoption of the Convention or with other relevant dates;

(d) Publishing

(i) Publication of the Convention and distribution to children, teachers and parents;

(ii) Publication of the text of the Convention in the periodicals Escuela Española, Comunidad Escolar and Magisterio Español in 1994 and 1997;

(iii) The magazine Jatun Sunqu is published under the programmes of education for development carried out jointly by two of the Platform organizations. Some issues have contained extracts from the Convention (No. 2, November 1995, for example) and others refer indirectly to it when discussing subjects such as child labour;

(iv) The activities carried out by these two organizations under the programmes of education for development include the publication of a family bulletin. This bulletin seeks to gain parents' commitment to instruct their children in values and to comply with the principles and rights contained in the Convention. It suggests learning activities for parents to carry out at home with their children, always in coordination with the children's teachers;

(v) Distribution of materials to parents' associations under the programmes of education for development;

(vi) A comic strip on children's rights was published in the quarterly magazine Aldeas;

(vii) Publications on maltreatment of children: "Ten commandments for the prevention of maltreatment in institutions" issued in Euskera and Spanish, and other publications in Catalan and Spanish;

(viii) Report on child labour in Spain;

(ix) Preparation and publication of materials on education in values;

(x) Collection of comic papers: "Crispín and his friends remind you about your rights" and "Crispín and Sara against AIDS".

L. Measures undertaken or foreseen to make the periodic reports widely available to the public (CRC/C/58, para. 23)

1. Measures adopted by the State

411. As noted in section A.1 of the Introduction, the initial report and the Committee's observations thereon were published in 1996.

412. An account of the preparation of the second report and the institutions and social organizations involved in the exercise was given in section D of the Introduction.

413. Beginning in 1997 and continuing throughout 1998, several meetings were held with the Platform of Children's Organizations in order to arrange for its participation in the preparation of the second report through the working group created by the Platform itself for this purpose. The organizations members of the Platform were sent a questionnaire based on the Committee's guidelines for the collection of information.

414. This cooperation meant an enormous effort and investment of time and resources by the Platform organizations.

415. In addition to this work, the organizations are making a study of the extent of the application of Spanish legislation and the possibility of gaps in the legislation with respect to the principles and provisions of the Convention. The aim is to establish a clear picture of the situation of children and to try to produce specific recommendations and suggestions on what needs to be done to improve it.

416. The corresponding sections of this report contains the information supplied by the Platform organizations.

II. DEFINITION OF THE CHILD
(CRC/C/58, para. 24)

The age of majority and minority in Spanish law

417. According to article 12 of the Constitution, "Spaniards legally come of age at 18".

418. Although birth is what determines personality in the legal sense and therefore what renders a person capable of holding rights and obligations, the exercise of these rights and fulfilment of these obligations may require particular conditions and aptitudes.

419. During the age of minority, i.e. for all who have not yet reached the age of 18, children and adolescents are subject to a different legal regime, which in some respects regards them basically as persons requiring social and legal protection. During the age of minority, as will be seen, certain rights may be acquired and exercised and certain responsibilities accepted at specific ages, depending on the personal capacity accorded at those ages.

420. The Civil Code states that the age of majority is 18 years (art. 315).

421. The Protection of Minors Act, which was discussed at length in the Introduction to this report and in paragraphs 172 et seq., applies to "persons under the age of 18 years within Spanish territory" (art. 1), thus coinciding with the age of application of the Convention.

422. Eighteen years is also taken as the reference age in the legislation of the Autonomous Communities referred to in paragraphs 172 et seq.: Asturias -article 3 of Act 1/1995 of 27 January on the protection of minors; Balearic Islands - article 1 of Act 7/1995 of 21 March on the protection of minors; Canary Islands - article 2 of Act 1/1997 of 7 February on the integrated care of minors; Castile-La Mancha - article 8 of Act 5/1995 of 23 March on solidarity; Catalonia - article 2 of Act 8/1994 of 27 July on the care and protection of children and adolescents; Extremadura - article 2 of Act 4/1994 of 24 November on the protection of minors; Galicia - article 2 of Act 3/1997 of 9 June on the family, children and adolescents; Madrid - article 2 of Act 6/1995 of 28 March on guarantees of the rights of children and adolescents; Murcia - article 2 of Act 3/1995 of 21 March on children; Valencia - article 1 of Act 7/1994 of 5 December on children.

423. Some of the autonomous legislation (Catalonia, Galicia, Madrid) distinguishes between two stages of minority: childhood (0-12 years) and adolescence (12-18 years).

424. However, the age of majority for foreigners is set at 18 years.

425. In private international law as applied by Spain the age of majority has traditionally been regarded as determined by the corresponding national law as a matter of personal status (art. 9 of the Civil Code).

426. Furthermore, article 1 of the Protection of Minors Act states: "This Act and its corresponding legislation shall apply to persons aged under 18 years within Spanish territory, provided that such persons have not previously reached the age of majority under the law applicable to them".

427. However, this referral to national law is subject to an important exception when the matter in respect of which the age status of a foreigner is being determined falls within the scope of certain agreements ratified by Spain and containing special rules.

428. For example, article 12 of the 1961 Hague Convention concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Infants, which is in force in Spain, states: "For the purposes of the present Convention, 'infant' shall mean any person who has that status, in accordance with both the domestic law of the State of his nationality and that of his habitual residence".

429. Other agreements define the age of majority specifically and not by referral to other legislation: the Conventions of the Hague and Luxembourg on international child abduction limit their scope to children aged under 16 years. This same age is used in the Agreement between Spain and Morocco on judicial assistance and the recognition and enforcement of judicial decisions in matters relating to the law of custody, visiting rights and surrender of children, signed in Madrid on 30 May 1997.

430. Depending on their degree of maturity and subject to the law, minors aged under 14 years may act in the following matters:

(a) They may acknowledge children born out of wedlock, although in order to be valid such recognition requires judicial approval after a hearing by the Government Procurator's Office (art. 121 of the Civil Code);

(b) They may acquire possession of things, although they require the assistance of their legitimate representatives in order to use the rights created by such possession (art. 443);

(c) Foster care proceedings require the consent of children aged 12 and older (art. 173.2, first para.);

(d) Adoption proceedings require the consent of children aged 12 and older (art. 171.1). And such children must be heard provided that they have sufficient judgment (art. 177.3 (3));

(e) If administration by the parents endangers the estate of a minor child, he may request a court to take whatever action it deems necessary for the security and protection of the property in question, to order a surety or bond for the continuation of the administration, or even to appoint an administrator (art. 167);

(f) If they have sufficient judgment, they must always be heard by their parents before any decision affecting them is taken (art. 154, fifth para.). Article 9.1 of the Act stipulates in general terms that minors are entitled to be heard in the family with respect to decisions affecting their personal, family or social life;

(g) In the event of the de facto separation of the parents, unless they decide by common accord which of them is to take charge of the care of any minor children, the court shall make this decision for the benefit and in the best interests of the children. Before making the corresponding order the court must hear the children, provided that they have sufficient judgment, and must in any case hear children aged 12 or older (art. 159);

(h) When ruling on guardianship the court must hear a minor who has sufficient judgement and all minors aged 12 or older (art. 231);

(i) They may request the court to order appropriate measures for their maintenance and for their future needs if their parents fail to perform this duty (art. 158.1);

(j) In the event of separation, annulment or divorce, children aged under 12 who have sufficient judgement and all children aged 12 or older must be heard by the court when considering measures concerning their care and upbringing (art. 92, second para.);

(k) They may accept unencumbered gifts (i.e. without liens or other obligations) provided that "they have the natural capacity to understand and wish to accept" (art. 625);

(l) They may exercise parental authority over their children with the assistance of their parents or, failing that, of their guardians. In the event of disagreement or incapacity, this assistance is provided through the courts (art. 157).

431. Depending on their degree of maturity and subject to the law, minors aged 14 years or older may act in the following matters:

(a) They may marry, provided that a competent court, with just grounds and on the application of the party concerned, waives the age impediment (arts. 46.1 and 48, second para., of the Civil Code). Marriage produces the de jure emancipation of a minor (art. 316);

(b) They may conclude marriage settlements, although the cooperation and consent of their parents or guardian is required, and such settlements are limited to matters of separation and participation (art. 1329);

(c) They may make gifts in connection with their marriage, although the authorization of their parents or guardian is required (art. 1338);

(d) If majority is acquired by marriage, they may exercise parental authority over their children without any assistance (art. 157);

(e) A married minor may alienate or encumber immovable property, commercial or industrial establishments or items of exceptional value owned in common by the spouses. If the other spouse is of age, the consent of both spouses is sufficient. If the other spouse is also a minor, the parents or curators of both spouses must also give their consent (art. 324);

(f) They may validly acknowledge children born out of wedlock without requiring judicial approval or a hearing by the Government Prosecutor's Office (art. 121);

(g) They may make wills (art. 663) subject to the holograph requirements applicable to persons over the age of majority (art. 688);

(h) They may request the acquisition of Spanish nationality by election, or a naturalization or residence card, with the assistance of their legal representatives (arts. 20.2 (b) and 21.3 (b));

(i) Provided that they are 14 or older and within one year of their emancipation, they may opt for civil residence in their place of birth or for the latest civil residence of either of their parents. Non-emancipated minors must be assisted by their legal representatives when making this choice (art. 14.3, fourth para.);

(j) They may give testimony in court (art. 1246.3);

(k) Under the civil law of Aragón, minors aged 14 or older, although not emancipated, may conclude by themselves any kind of legal act or contract, with the assistance if necessary of either of their parents, their guardian or the council of relatives (art. 5 of the compilation of civil law of Aragón);

(l) In addition, if such minors live independently of their parents - with their consent and on justified grounds - they are free to administer all their own property (art. 5.3 of the compilation).

432. Depending on their degree of maturity and subject to the law, minors aged 16 or older may act in the following matters:

(a) They may request judicial emancipation in the cases specified by law (Civil Code, arts. 314.4 and 320);

(b) Until they reach the age of majority or acquire the civil status of emancipation, they may not change their names or surnames without action by their legal representatives (arts. 109 and 323 and in accordance with the civil registry legislation);

(c) Emancipation may be granted by the persons exercising parental authority if the minor in question has reached the age of 16 and gives his consent (arts. 314.3 and 317);

(d) Minors aged 16 or older living independently of their parents with their consent are regarded as emancipated for all purposes (art. 319);

(e) Minors aged 16 or older who are subject to tutorship may request a court to grant the benefits of majority (art. 321), with the effect that they may administer their persons and their property as if they were of age, subject to the limitations provided by law (art. 323);

(f) Minors aged 16 or older who have been emancipated or granted the benefits of majority may exercise parental authority over their children without any assistance (art. 157);

(g) Emancipated minors may accept encumbered gifts with the assistance of their parents or curator (arts. 1263, 323 and 626);

(h) Emancipated minors may request, of their own accord, the acquisition of Spanish nationality by election or a naturalization or residence card (arts. 20.2 (c) and 21.3 (a));

(i) Emancipated minors, with the consent of their parents or, in the absence of both parents, of their curator, and minors who have been granted the benefits of majority by a court, with the consent of their curator, may before reaching the age of majority: accept monetary loans, encumber or alienate immovable property and commercial or industrial establishments and objects of exceptional value (art. 323, first para.)

(j) Emancipated minors and minors who have been granted the benefits of majority by judicial order may appear alone before the courts (art. 323, second para.);

(k) Minors aged 16 or older may act as witnesses for the purposes of making a will during an epidemic without the involvement of a notary (art. 701);

(l) Minors aged 16 or over may carry out acts of ordinary administration of property which they have acquired through their work or industry. Acts of special administration require the consent of their parents (art. 164.3);

(m) Provided that a minor aged 16 or older gives his consent in a public document, his parents may:

  (i) Revoke the rights which he possesses;

  (ii) Alienate or encumber his immovable property, commercial or industrial establishments, valuable objects and securities;

  (iii) Repudiate any inheritance or legacy made in the minor's favour;

If the parents do not have the consent referred to above, all these acts of disposition are subject to the demonstration of justified grounds of utility or necessity and to the prior authorization of the competent judicial authority following a hearing by the Government Prosecutor's Office. However, this judicial authorization is not required for acts of disposition of movable assets when the proceeds will be reinvested in property or securities or for matters connected with preferential rights to stocks and shares (art. 166).

433. Children possess the right to protection of health and to health care and they are legally capable of exercising this right either by administrative means or through the courts.

434. This provision applies to the following rights accorded in article 10 of the General Health Act (14/1986 of 25 April) with respect to the various public health administrations:

(a) The right to respect for one's personality, human dignity and privacy, as well as to non-discrimination on the grounds of race, social class or sex or by reason of ethical, economic, ideological or political beliefs or trade union membership;

(b) The right to be informed about the available health services and the requirements for their use;

(c) The patient's right to confidentiality of all information connected with his case or stays in public health facilities or in private ones collaborating with the public system;

(d) The patient's right to be told whether any diagnostic, prognostic or therapeutic procedures may be used for teaching or research (which must never entail an additional threat to health). In any event, the patient's prior written authorization and acceptance by the doctor and the management of the health facility is mandatory;

(e) The right of the patient and his family or other close relatives to be given, in comprehensible spoken or written language, full and up-to-date information about his case, including diagnosis and prognosis and treatment options;

(f) The patient's right to choose freely from among the options presented by the doctor in charge of the case and for any intervention to be subject to the patient's prior written consent, except in the following circumstances:

(i) When failure to intervene may entail a public health risk;

(ii) When the patient is incapable of deciding; in such cases this right is transferred to the members of his family or other close relatives;

(iii) When the urgency of the case allows no delay owing to the risk of irreversible damage or of death;

(g) The patient's right to be assigned a doctor, whose name must be communicated to him and who must act as his main intermediary with the medical team. In this doctor's absence one of the other professional members of the team assumes this responsibility;

(h) The patient's right to receive a formal certificate of his state of health when a law or regulation so requires;

(i) The patient's right to refuse treatment, except in the cases mentioned in paragraph (f) above; if he refuses treatment he must request voluntary discharge on the terms specified in paragraph 4 of the next article;

(j) The right to participate in health activities through community institutions, under the conditions set out in this Act and in its enabling legislation;

(k) The patient's right to have full details of his case recorded in writing. At the end of a patient's stay in hospital his discharge report must be delivered to him or to a family member or other close relative;

(l) The patient's right to lodge claims and make suggestions within the prescribed time limits. In either case he must receive a written response within the time limits established in the regulations;

(m) The right to choose a doctor and other qualified personnel in accordance with the provisions of this Act, its enabling legislation, and the regulations on health centres;

(n) The patient's right to obtain medicines and other medical items necessary for improving, maintaining or restoring his health on the terms set out in the regulations of the General Administration of the State;

(o) Subject to the particular financial regime of each health service, the rights mentioned in paragraphs (a), (c), (d), (e), (f), (h), (j) and (l) of this article may also be exercised with respect to private health facilities.

435. The consent of a third party is required only in the cases specified in the Act. If a patient is incapable of making decisions concerning surgery, the consent of his family or close relatives may be sought.

436. In its chapter on bodily harm the Criminal Code makes a reference to elective organ transplants, sterilization and sex-change surgery, when the consent of the patient provides an exemption from criminal liability; this provision does not apply to minors, whose consent or that of their legal representatives is invalid.

437. The involvement of minors in clinical tests is also subject to specific regulations: with a few exceptions, only such tests as are of benefit to the patients concerned may be carried out and only when they cannot be carried out on persons not affected by the specific condition because the pathology under study is peculiar to those patients. When minors are concerned, consent must always be given in writing by their legal representatives. When the patient's condition allows, and without exception when he is aged 12 or older, he must also give his consent, after having received all the relevant information in a form that he can understand.

438. According to the General Education (Organization) Act (1/1990 of 3 October), basic compulsory free education includes primary (art. 12) and the first four academic years of secondary, i.e. from age six to 16. The Baccalaureate is taken for two academic years, from age 16 to 18 (art. 25).

439. According to articles 6 and 7 of Royal Decree 1/1995 of 24 March, which approved the amended text of the Workers' Statute Act, the minimum age of work is 16 years, subject to some exceptions discussed below. Thus the labour legislation does not allow children aged under 16 to work. However, the appearance of such children in public performances may be authorized by the labour authorities on an exceptional basis.

440. Children aged 16 or 17 may sign labour contracts if they are living independently (emancipated de facto or by marriage) or otherwise by authorization of their parents or guardians.

441. In no case may workers aged under 18 do more than eight hours actual work a day, including training time. Nor may they do night work or overtime or work declared to be heavy, harmful or hazardous either for their health or for their vocational and personal training.

442. In addition, the period of rest during the working day is extended for minors to 30 minutes from the 15 minutes stipulated for other workers, provided that the day is longer than four and a half hours; similarly, minors must have two uninterrupted days of weekly rest.

443. The 1994 reform of labour legislation retained the option of training contracts for workers aged 16 or over but under 21 desiring specific on-the-job training. The main innovation here is that, following the reform, social security cover is extended to this type of contract, including for example health benefits in respect of common illnesses and temporary incapacity to work, but other benefits such as unemployment benefit are still excluded. Furthermore, a new subsidized type of contract has been introduced in the legislation: the contract for the promotion of open-ended (i.e. not fixed-term) recruitment, which may help to bring about significant improvement and stabilization of the situation of young people in the labour market.

444. In addition, according to article 7 of the Protection of Minors Act, children holding a labour contract are free to join the trade union of their choice and to take part in the election of the enterprise's worker representatives, although they may not stand for election themselves until age 18 (art. 69 of the Workers' Statute).

445. Unemancipated minors may not marry. The age restriction may be waived by a court of the first instance to allow marriage from age 14; the minor and the parents or guardians must be heard in such proceedings.

446. A minor obtains emancipation by reaching the age of majority, by marriage, by concession of the persons exercising parental authority, or by court order. In the latter two cases the minor must be at least 16 years old.

447. Emancipation empowers a minor to administer his person and his property as if he had reached the age of majority; however, such minors do not have the legal capacity to perform certain acts until the age of majority: to accept cash loans or to encumber or alienate immovable property, commercial or industrial establishments or objects of exceptional value.

448. In any conflict of interest between a parent and his or her non-emancipated child, the other parent is responsible by law for representing the child, but if the conflict is between both parents and their child, the court appoints a legal counsel for the child, to represent him in and outside the court.

449. Spanish legislation does not specify a minimum age of consent to lawful sexual relations. As already mentioned in chapter I.B in the discussion of State legislation, the Criminal Code regards all sex acts committed with children aged under 12 as sexual abuse offences, i.e. the question of consent is completely irrelevant. However, in the case of children aged 12 or older but under 18 no offence is committed if the child consents. But even if the child does consent the sexual act may constitute an offence if it is demonstrated that the consent was obtained by deception or by abuse of a position of authority.

450. With regard to the minimum age of recruitment, article 12.1 of the Military Service Act (13/1991 of 20 December) states: "The reference age for the performance of military service is 18 years". However, it is possible for persons aged under 18 to volunteer for military service (Royal Decree 1107/1993 of 9 July, approving the recruitment regulations).

451. On the subject of criminal responsibility see also chapter VIII.B.1 for a discussion of the situation of children aged 12 or older but under 18. As already explained in the initial report (paras. 12, 83 and 318-322), in the case of juvenile offenders Organizational Act 4/1992 of 5 June, amending the Act on the jurisdiction and procedures of the juvenile courts, stipulates 12 years as the minimum age of criminal responsibility.

452. Article 19 of the new Criminal Code, approved by Organizational Act 10/1995 of 23 November, raises the age of criminal responsibility to 18 years, the same as the age of civil majority. However, the entry into force of this article 19 was deferred until the adoption of the Organizational Act on the criminal responsibility of minors, which will address comprehensively and on an up-to-date basis all matters of juvenile justice, i.e. the criminal prosecution of offences committed by persons aged under 18 years.

453. Neither imprisonment for life or the death penalty exist in Spain.

454. With respect to the minimum age for seeking asylum in Spain, article 1 of Act 5/1984 of 26 March on the right of asylum and refugee status (amended by Act 9/1994 of 19 May) accords "to foreigners the right to request asylum" without setting any age limits and interpreting "foreigner" to mean any non-national. Minors entering Spanish territory in the company of an ascendant relative are covered by the "extension of asylum to family members" envisaged in article 10 of the Act, which provides that asylum is granted by extension to a refugee's ascendant and descendant relatives (dependent minors) in the first degree of kinship, as well as to the refugee's spouse or a person connected to him by similar bonds of affection and cohabitation.

455. Article 15.4 of Royal Decree 203/1995 of 10 February, which approved the regulations for the application of Act 5/1984, provides that unaccompanied or unprotected minors seeking asylum must be represented by their legal tutors during the processing of their asylum applications, which must be handled in accordance with the international conventions and recommendations applicable to such applications.

456. The rule for unaccompanied minors described above applies in intermediate situations, for example when a minor seeking asylum enters Spanish territory in the company of a relative or friend of his parents.

457. Article 211 of the Civil Code provides that the confinement for reasons of mental disorder of a person who is incapable of taking the decision for himself requires judicial authorization even if he is subject to parental authority. In all cases minors must be placed in a mental health institution suited to their age, on the basis of a report from the child care services.

458. In civil proceedings, only persons in full possession of their civil rights may appear before the courts. Other persons are represented by their legitimate representatives or by persons responsible by law for making good their incapacity. Emancipated minors may appear on their own behalf.

459. Non-emancipated minors require authorization to appear, except in proceedings brought by a child against his father or mother.

460. The Civil Proceedings Act provides that only persons in full possession of their civil rights may institute criminal proceedings, except in respect of an offence or omission committed against their person or property or the person or property of their spouse, ascendant or descendant relatives, siblings, or relatives by marriage.

461. The obligation to comply with a summons to appear as a witness applies equally to minors.

462. For purposes of the criminal prosecution of a minor, the examining magistrate assigns him the services of a juvenile procurator and a lawyer, unless the minor or his legal representative designates persons having their confidence to represent him and conduct his defence.

463. Article 30 of Act 30/1992 of 26 November on the legal regime of public administrations and common administrative procedures established the capacity to appear before a public administration in the following terms:

> "In addition to the persons possessing the capacity to appear before a public administration pursuant to the civil law, minors shall possess this capacity for the exercise and defence of those of their rights and interests whose assertion is permitted by the legal and administrative regulations without the assistance of the person holding parental authority, tutorship or curatorship. This provision does not apply to disabled minors when the extent of their disability affects the exercise and defence of the rights and interests in question".

464. The consent of children aged 12 or older is required for formal placement with a foster family. Such consent is also required for the purposes of adoption. If the child is aged under 12 and has sufficient judgment, he may simply make a statement to the court (art. 177 of the Civil Code).

465. Access to civil registry information about adoptive filiation is subject to restrictions, with the effect that certified copies of entries in the register of births may be issued only to adoptive parents, adopted children of the age of majority, and other persons who can demonstrate a legitimate interest and have obtained specific prior authorization from the court having jurisdiction over the civil registry.

466. The Protection of Minors Act, referred to in paragraphs 172 et seq. and elsewhere in the report, accords to minors the right to form associations, without indicating any age restrictions. It merely states that when children's and youth associations wish to assume civil obligations they must appoint a legal representative with full civil capacity.

467. The Constitution and the Protection of Minors Act accord to children the freedom of religion. The Constitution establishes the duty of the public authorities to safeguard this right and to assist parents to enable their children to receive religious and moral training in accordance with their own beliefs. The Act states that parents and guardians have the right and the duty to help children to exercise this freedom in such a way as to contribute to their comprehensive development.

468. The general legislation of the Spanish State prohibits the sale of alcohol to children aged under 16 and the consumption of alcohol by them in places or establishments of recreation or entertainment.

469. The sale or distribution of tobacco and alcoholic beverages are also prohibited in all the schools operated under the Ministry of Education and Culture.

470. In the exercise of their own jurisdiction (policies for children and young people, health, and internal commerce) some of the Autonomous Communities have adopted laws imposing a general prohibition on the sale of alcoholic beverages to children. The minimum age is set at 16 in some cases and at 18 in others; for this issue is not treated in the same way throughout the national territory.

471. In Spanish law the minimum age of employment (16 years) is the same as the age of completion of compulsory education.

472. Spanish legislation does not make any distinctions based on the sex of minors.

III. GENERAL PRINCIPLES

A. Non-discrimination (art. 2)
(CRC/C/58, paras. 25-32)

1. Measures adopted by the State

(a) Non-discrimination in the Spanish Constitution

473. Paragraphs 95-96 of the initial report referred to article 14 of the Constitution, which establishes the principle of equality before the law without any discrimination by reason of any condition or personal or social circumstance. The Constitution addresses equality of treatment in three places:

(a) This concept appears first in article 1, paragraph 1, as a higher value of the legal order;

(b) The Constitution then states the principle of non-discrimination in general terms in article 14, where it establishes Spaniards' equality before the law, for they "may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other condition or personal or social circumstance";

(c) Lastly, article 9.2 establishes equality as a principle which transforms society:

> "It is incumbent upon the public authorities to promote conditions which ensure that the freedom and equality of individuals and of the groups to which they belong is real and effective, to remove the obstacles which prevent or hinder the full enjoyment of such freedom and equality, and to facilitate the participation of all citizens in political, economic, cultural and social life".

474. Spanish doctrine and jurisprudence interpret these various senses of the principle of equality as an extension of the traditional concept of non-discrimination. Equality also sets a limit to the acts of the public authorities, which may not allow discrimination, and its delivery becomes a function of the public authorities: they must carry out a policy of encouraging social changes for the benefit of population groups living in disadvantaged circumstances.

475. The combined effect of these three aspects of equality leads to the prohibition of discriminatory acts but not to the prohibition of differentiated treatment of certain individuals or groups which require such treatment in order to give effect to the principle of real equality proclaimed in article 9, paragraph 2, of the Convention.

476. There is no doubt that the Constitutional system applies to minors in respect of the principle of non-discrimination, for the provisions on equality refer to all citizens. Non-discrimination in general, together with differentiated treatment of certain situations in order to eliminate unfavourable distinctions due to social or economic status or other grounds, constitute general standards of action which form the basis of the judicial system, with the specific purpose of protecting the weakest groups in society, such as children in particular.

477. Accordingly, with regard to the grounds of discrimination referred to in article 2 of the Convention, it must be understood that in Spain everyone is covered by article 14 of the Constitution, which prohibits discrimination on account of any condition or personal or social circumstance, in addition to the specific grounds mentioned.

478. These principles apply to the juridical treatment of filiation, for the Constitution stipulates the full equality of children and the equality of mothers and fathers regardless of their civil status as well as permitting the investigation of paternity. These principles are stated in article 14, on equality, in article 32.1, which recognizes the right to marry "on a basis of full legal equality", and in article 39, mentioned in earlier sections of the report, where paragraph 2 states:

> "The public authorities likewise shall ensure full protection of children, who shall be equal before the law, irrespective of their parentage, and of mothers, whatever their marital status. The law shall provide for the investigation of paternity".

(b) Non-discrimination in the Protection of Minors Act

479. Article 3 of this Act, already referred to in the Introduction to the report and in section I.B, states:

> "Minors shall enjoy the rights accorded to them in the Constitution and the international treaties to which Spain is a party, in particular the Convention, and the other rights established by law without any discrimination on the grounds of birth, nationality, race, sex, disability or illness, religion, language, culture or opinions or on account of any other personal, family or social circumstance [...] The public authorities shall ensure respect for minors' rights and act in accordance with this Act and the international legislation mentioned above".

480. This provision, which refers specifically to minors, guarantees by virtue of the Act's status of fundamental law non-discrimination against minors in the exercise of their rights.

481. Article 11 sets out the principles governing the acts of the public authorities:

> "They shall carry out integrated policies for children's development through appropriate means [...] and shall promote policies to correct social inequalities. In no case shall the essential content of children's rights be affected by a lack of core resources".

(c) Non-discrimination in legislation on education

482. Beyond the sphere of general declarations, education is of particular importance for the effective implementation of the principle of non-discrimination, for it is one of the chief means of eliminating discrimination. Article 27 of the Constitution proclaims the entitlement of "everyone" to education. Education is therefore a generic right, but it must be understood above all as a right to provision of a service by the public authorities.

483. Pursuant to this provision, article 1 of Organizational Act 8/1985 of 3 July on the right to education posits the right to education "of all Spaniards", stipulating that education shall be compulsory and free "at the level of basic general education"; and paragraph 2 of this article states the right to education "and of access to the higher levels of education", to be exercised in the light of "aptitudes and vocation, but such exercise shall never be subject to discrimination based on the student's economic capacity, social status or place of residence".

484. Furthermore, the preamble to the General Education (Organization) Act (1/1990) highlights the importance of education as a tool for eliminating discrimination, for education facilitates "progress in the fight against discrimination and inequality on the basis of birth, race, sex, religion or opinions, or

arising from family or social background or from traditional attitudes, or appearing as a constant feature of the dynamics of society".

485. Article 2.3 (c) of this Act states among the principles on which education is based "the effective equality of rights of the sexes, the rejection of any kind of discrimination, and respect for all cultures".

486. Title V, on the correction of inequalities in education, establishes specific measures of positive discrimination. Article 64 enjoins the education authorities to ensure when necessary:

> "...conditions most conducive to attendance at primary school by all children whose personal circumstances owing to their membership of low-income families or to their geographical origins or any other circumstance entail an initial inequality in access to compulsory education and advancement to the higher levels".

487. It also establishes other measures to ensure access to quality education at all levels for children living in disadvantaged circumstances. For example, article 85.3 requires the education authorities to equip "...schools whose pupils have specific difficulties in attaining the general objectives of basic education owing to their social circumstances with the necessary human and material resources to correct the situation". This provision also states that "the organization of these schools and their timetabling shall be tailored to the specific needs of the pupils".

488. Royal Decree 1174/1983 of 27 April on positive discrimination in education is a regulatory instrument on concrete measures to eliminate the inequalities suffered by some people in the education system for reasons connected with their economic or social circumstances, place of residence, etc. With a view to tackling this situation, positive discrimination is established in the legal system as a safeguard of the full exercise of the right to education by disadvantaged groups. The Decree provides for a programme of positive discrimination in education, which has been fully in operation over recent years; it allows for the conclusion of agreements between the Education Ministry and the Autonomous Communities which, having full jurisdiction in educational matters, wish to participate in positive-discrimination programmes. Article 1 of the Decree stipulates that these programmes are to be carried out "for the benefit of those geographical areas or population groups which, owing to their special characteristics, require preferential treatment in education".

489. Lastly, Act 1/1990 recalls the obligation of the public authorities to protect children; article 65.4 states:

> "With a view to guaranteeing children's education, the public authorities shall assume a supporting role in providing for their care and attention when their families find themselves in situations which impede the exercise of their responsibilities".

(d) Non-discrimination in health care

490. Article 16 of the General Health Act (14/1986 of 25 April) states that "the rules for use of the health services shall be the same for everyone, regardless of the terms of access thereto...". And article 10, referred to in paragraph 434 above, states:

> "Everyone shall have the following rights with regard to the various public health administrations: (1) respect for their personality, human dignity and privacy without discrimination on the grounds of race, social class or sex or by reason of ethical, economic, ideological or political beliefs or trade union membership".

Article 12 goes on to state:

> "The public authorities shall use their policies on health expenditure to correct inequalities in health care and ensure equal access to the public health services throughout Spanish territory, in accordance with articles 9.2 and 158.1 of the Constitution".

(e) Non-discrimination in the Civil Code

491. The initial report described some of the amendments designed to bring domestic legislation into line with the principles of the Constitution.

492. The Civil Code underwent a number of amendments in order to give effect to the provision of the Constitution concerning the elimination of all discrimination from birth. As pointed out in the initial report, Act 11/1991 of 13 May, amending provisions of the Civil Code on filiation, parental authority and the financial regime of matrimony, removed the distinction between legitimate and illegitimate birth and its subdivisions. Thus, according to article 108 of the Civil Code only "natural filiation or filiation by adoption" now exist:

> "Filiation may occur naturally or by adoption. Natural filiation may occur within or out of wedlock. It occurs within wedlock when the father and mother are married to each other.
>
> Filiation within wedlock and out of wedlock and filiation by adoption produce the same effects, in conformity with the provisions of this Code".

493. Furthermore, the effects of filiation come into force from the moment when the filiation occurs and may be retroactive "provided that such retroactivity is compatible with the nature of the effects and that the law does not stipulate otherwise" (art.112 of the Civil Code).

494. Subsequently and along the same lines, Act 11/1990 of 15 October, amending the Civil Code in application of the principle of non-discrimination on the grounds of sex, modified a number of provisions which, for the purpose of determining the effectiveness of certain legal relationships and situations, used criteria which the Legislature deemed to entail either a preference or improper treatment on the grounds of sex. The initial report already drew attention to the important amendment to article 159 of the Civil Code: instead of assigning the care of children aged under seven years by preference to the mother, this provision now leaves it to the court to decide, always with an eye to the children's benefit, which parent should care for minor children.

(f) Non-discrimination against foreigners

495. In the case of the existing measures to ensure respect for the rights which the Convention accords to foreign and stateless children without any kind of discrimination, attention must be drawn to the provisions of Royal Decree 155/1996 of 2 February, which approved the regulations on the implementation of Organizational Act 7/1985 of 1 July on the rights and freedoms of foreigners in Spain.

496. Article 12 of these regulations refers expressly to the need for foreign minors to be treated in conformity with the Convention. It also recalls that they are entitled to education in accordance with the General Education (Organization) Act as well as to health care and other social benefits as prescribed by the Convention.

497. The right to education is established in Spanish law for all foreign children irrespective of the legality or illegality of their status in Spain (art. 12 of the regulations and art. 10.3 of the Protection of Minors Act).

498. The regulations accord the right to health care to all foreign children. The Protection of Minors Act provides that they have this right when in a situation of risk or in the guardianship of the Public Administration (art. 10.3), and although this right is not expressly stated for foreign children when neither of these situations obtains, any interpretation of the Act to mean that they are not entitled to health care would be at variance with the Convention: it must be recalled that the Constitution stipulates that the Convention prevails in any conflict of this type (article 96.1 in fine of the Constitution, already discussed in chapter I).

499. More specifically, article 13 of the regulations guarantees that children "in a situation of desamparo" will be entrusted to the child care services of the relevant Autonomous Community. It also exempts them from the possibility of expulsion envisaged in article 26.1 of Organizational Act 7/1985 and grants them a residence permit at the request of the institution exercising guardianship, as well as stipulating that they shall if necessary be provided with documents in accordance with article 63 of the regulations.

500. Prior to the approval of these regulations, foreign children in a situation of desamparo were frequently regarded as "illegal" under Spanish law. The present situation constitutes an important step forward in the defence of the rights of such foreign children, for although previously the protection provided by the State dealt with the problems caused by their illegal status while they were minors it did not prevent the difficulties which arose once they reached the age of majority.

501. Perhaps the most important contribution of these regulations to the integration of foreigners in Spain was the creation of the "permanent" residence permit.

502. One of the situations in which this permanent permit is granted is when a minor has been in the guardianship of a Spanish public agency for the three consecutive years prior to attaining the age of majority (art. 5.2 (e) of the regulations), this period providing the opportunity for integration in society and the labour market.

503. Comments have already been offered in chapter II on foreign minors seeking asylum with reference to Act 5/1984 of 26 March on the right to asylum and refugee status (amended by Act 9/1994 of 19 May).

504. A distinction can be made between those minors who rely on an application for asylum lodged by one of their parents under the "family extension" provision (art. 10 of Act 5/1984) and those seeking asylum in their own right, who fall within the scope of article 15.4 of Royal Decree 203/1995 of 10 February, which approved the regulations on the implementation of Act 5/1984, and of the legislation on foreign minors in general (art. 12 of the regulations on the implementation of Organizational Act 7/1985) and on minors in a situation of desamparo.

505. In the case of children included in their parents' asylum application, the submission of the application by the parents secures provisional residence rights for the children (or admission to Spanish territory if they did not travel with their parents), a guarantee that they will not be returned or expelled and, if the parent or parents lack sufficient economic resources, the right of access to the social, education and health services provided by the competent public authorities (arts. 11, 12 and 15 of the regulations on the implementation of Act 5/1984).

506. In the case of children acquiring refugee status through the granting of their parents' application, in which they were included under the "family extension" provision, the regulations provide that the competent authority must issue an identity document authorizing "the refugee and the dependants or family members admitted under the family extension clause to reside in Spain and take up employment..." (art. 29.2), and if the refugee lacks work or the economic means of providing for his needs or those of his family (art. 30) they may also have access to the social, education and health services provided by the competent public authorities (art. 15.1).

507. The situation of minors seeking asylum independently or accompanied by someone other than a parent is addressed in article 15.4 of the regulations on the implementation of Act 5/1984, in the general provisions on foreign minors (art. 12 of the regulations on the implementation of Organizational Act 7/1985) and on minors in a situation of desamparo (art. 13 of the same regulations). They are entrusted to the child care services of the Autonomous Community in question and their cases are brought to the attention of the Government Prosecutor's Office, it being understood that "in no case may expulsion orders be imposed on such minors"; they are issued with a residence permit, at the request of the body exercising tutorship and, when necessary, with documents in accordance with article 63 of the regulations. Of course, as foreign minors they also fall within the scope of article 12 of the regulations on the implementation of Organizational Act 7/1985, which safeguards their rights under the Convention. Furthermore, pursuant to article 15.4 of the regulations on the implementation of Act 5/1984 the tutor legally assigned to such children represents them during the processing of their asylum application, which must proceed in conformity with the provisions of the international conventions and recommendations applicable to children seeking asylum.

508. As may be seen, Spanish legislation on the right of asylum is not over-specific with respect to the obligation set out in article 22, paragraph 1, of the Convention, under which States parties must take appropriate measures to ensure that a child seeking asylum or refugee status, whether unaccompanied or accompanied by a parent or by any other person, receives appropriate protection and assistance in the enjoyment of the rights set forth in the Convention.

509. The recent resolution of the Council of the European Union on unaccompanied minors who are nationals of third countries (97/c 221/03, DOCE, 19.7.97) regulates the details of the asylum procedure applicable to unaccompanied minors.

510. This resolution recognizes the right of unaccompanied minors to apply for asylum, the need for States to process their applications quickly, the need for interviews with the children to be conducted by qualified and experienced officials, who must have undergone special training, and the need to take due account of the possibility that a child's knowledge of the situation prevailing in the country of origin may be limited.

511. In any event, the resolution obliges the States members of the European Union only to keep its contents in mind when making any amendment to their domestic legislation on asylum and to make maximum efforts (an obligation of conduct not of result) to incorporate the principles set out in the resolution in their internal law before the beginning of 1999.

(g) Non-discrimination in other legislation

512. The International Covenant on Civil and Political Rights of 16 December 1966, ratified by Spain in 1985, and the European Convention for the Protection of Human Rights and Fundamental Freedoms, both referred to in chapter I.K above, stipulate the need for each State party to respect and ensure to all individuals within its territory the rights recognized in the two instruments without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin,

property, birth or other status (art. 2.1 of the Covenant and, in similar language, art. 14 of the European Convention).

513. The important thing in these provisions lies not so much in their respective declarations as in the fact that both the Optional Protocol to the Covenant, to which Spain is a party, and the machinery of the European Convention accord to individuals who believe that their rights have been infringed the possibility of submitting communications to the Human Rights Committee (for the Covenant) and to lodge truthful applications with the European Commission and the Court of Human Rights (for the European Convention). As pointed out in chapter I.F above, any applications may be brought before the Court, for Additional Protocol 11, which so provides, entered into force in November 1998.

514. In any event, neither of the provisions cited above (art. 2.1 of the Covenant and art. 14 of the European Convention) states the right not to suffer discrimination on the grounds of race, colour, sex, language, religion, etc., but only the right not to suffer discrimination for these reasons in the exercise of the other rights set forth in the two instruments, many of which are also found in the Convention on the Rights of the Child (right to life, right not to be subjected to torture, right to liberty and security, freedom of conscience and religion, freedom of association and peaceful assembly, etc.). The text of the Convention itself, in article 2, paragraph 1, on non-discrimination, refers only to the prohibition of discrimination in the exercise of the rights of the child in accordance with the Convention.

515. Except in article 14 mentioned above, the European Convention does not refer to non-discrimination as such, but the Covenant does do so.

516. Article 24.1 of the Covenant states:

> "Every child shall have, without discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State".

This article goes on to recognize the right of every child to be registered immediately after birth and to have a name and acquire a nationality. Article 26 provides that all persons are equal before the law and are entitled without any distinction to equal protection under the law against discrimination on any ground such as race, colour, sex, language, religion, political or other opinions, etc. It is important to keep in mind that these provisions provide protection not only against "vertical discrimination", i.e. discrimination by the public authorities, but also, and very pertinently, against "horizontal discrimination", i.e. by society, private institutions and so on.

517. The International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965, to which Spain is a party, condemns racial discrimination "in all its forms" and in particular in the exercise of certain rights (in the procedural, political and civil spheres: the rights to a acquire a nationality and to marry, the freedoms of thought, conscience and religion, opinion and expression, and the freedom of association and peaceful assembly; and in the economic and social spheres: the rights to work, health, education, culture, etc.).

518. This Convention created the Committee on the Elimination of Racial Discrimination, to which States parties undertake to submit reports on the legislative, judicial, administrative or other measures adopted in order to give effect to the provisions of the Convention. The Committee may make recommendations based on the contents of these reports. The Convention also provides that any State party may bring to the Committee's attention a failure by another State party to give effect to any provision of the Convention, but it stipulates further that any State party may declare that it recognizes the competence of the Committee to consider communications from individuals concerning a failure to

implement the Convention properly. However, Spain has not made a declaration to this effect under article 14.

519. Where labour relations are concerned, article 16 of Royal Decree 1/1995 of 24 March, approving the amended text of the Workers' Statute Act, stipulates that employment offices must ensure, within their area of competence, the application of the principle of equal access to employment and exclude any discrimination for reasons of race, sex, age, civil status, religion, political opinions, trade union membership, origin, social status or language. Article 17 establishes a general principle of non discrimination entailing the specific application of the provisions of article 14 of the Constitution.

520. In the case of minors, Royal Decree 2015/97 of 26 December fixed for the first time in Spain a minimum inter-occupational wage applying equally to workers older and younger than 18 years and thus ended an extremely dubious distinction, for the effective output of a 16-year-old is not necessarily less than the output of a worker aged 18 or 19; on the other hand, the time invested in the training of younger workers is already taken into account in fixing their wages, which depend on the time actually spent working, in accordance with the regulations on training contracts.

521. The system of criminal law contains measures to prevent and combat discrimination in general, although there are no specific provisions on minors.

522. The most typical of these measures is contained in article 22.4 of the Criminal Code, which establishes as an aggravating factor the commission of an offence for reasons of racism, anti-Semitism or other kinds of discrimination connected with the victim's ideology, religion or beliefs, his ethnic group, race or nation, sex or sexual orientation, or illness or disability. The aggravating factor of discriminatory motives applies to all acts punishable as crimes under Spain's criminal legislation, except for acts in which a motive of discrimination is already specifically assumed.

523. In addition to this generic provision on the elimination of racism of all kinds, the Legislature has established two specific offences involving discriminatory acts.

524. The first is found in article 510.1 of the Criminal Code, which establishes the offence of provoking discrimination, hatred or violence against groups or associations for reasons of racism or anti-Semitism or on other grounds connected with ideology, religion or beliefs, ethnicity or race, national origins, sex, sexual orientation, illness or disability; such conduct is punishable by imprisonment from one to three years and a fine of six to 12 months.

525. The other specific provision designed to prevent discrimination is contained in article 515.5 of the Criminal Code, which defines as unlawful any association that encourages or incites discrimination, hatred or violence against individuals, groups or associations on account of their ideology, religion or beliefs, the ethnicity, race or nationality of the group or association or any one of its members, their sex, sexual orientation, family circumstances, illness or disability. Article 516 provides for the punishment of the founders, managers and chairmen of such groups or associations by imprisonment for two to four years, a fine of 12 to 24 months, and specific disqualification from holding a public post or position for a period of six to 12 years; active members of the group or association are liable to imprisonment for one to three years and to a fine of 12 to 24 months.

526. Article 17 of Act 25/1994 of 12 July, which incorporates directive 89/552/EEC into Spanish law, states:

> "Television broadcasts shall not include programmes, scenes or messages of any kind which may seriously impair the physical, mental or moral development of children, or programmes

which encourage hatred, disrespect or discrimination on grounds of birth, race, sex, religion, nationality, opinions or any other personal or social circumstance".

(h) Other measures

527. The Constitutional Court's decision 67/1998 of 18 March, already mentioned earlier in the report, which was handed down in response to amparo application 109/95 in a case involving non-payment of maintenance and which cites the Convention in its statement of legal grounds, establishes the principle of non-discrimination against children by reason of their birth.

528. In 1993 the plaintiff had brought to court a complaint against the father of her daughter alleging failure to pay the maintenance which he had been ordered to pay in proceedings under non-contentious jurisdiction (i.e. not as the result of separation, divorce or annulment).

529. The claim against the father was dismissed, for the criminal legislation in force at the time (specifically article 487 bis of the former Criminal Code) provided for the punishment of "anyone who ceases to pay for three consecutive months or for six non-consecutive months any kind of economic benefit awarded to his spouse or his children in a judicially approved agreement or in a judicial order following legal separation, divorce, or annulment of the marriage".

530. Since the child in question had been born out of wedlock, the economic benefit did not derive from one of those situations; therefore, pursuant to the principle of legality, also established in the Constitution, the non-payment of maintenance could not be regarded as an offence.

531. The mother based her amparo application on the infringement of the fundamental right of her daughter not to suffer discrimination by reason of her birth, and the Constitutional Court ruled that the Legislature had brought about this discrimination by omitting to include children born out of wedlock when it decided to provide stronger protection under the criminal law for children's right to be cared for by their parents.

532. Programme to prevent racism and intolerance: this programme for young people aged 15 to 18 resulted from an agreement between the Youth Institute of the Ministry of Social Affairs, the Ministry of Education and Madrid's Complutense University. It began with a postgraduate course for teachers, who subsequently took posts in the schools in which the programme was operating.

533. The work units used as teaching materials were published and distributed in 1996; they include components on violence, racism and intolerance, young people, the gypsy people, immigrants and refugees, and human rights. Training courses for mediators were held in 1997; they dealt with the implementation and development of the prevention programme in both formal and informal education through youth associations.

534. A National Committee for the European campaign of youth against racism, xenophobia, anti-Semitism and intolerance, under the slogan "We are different, we are equal", was formed in 1994; it was chaired by the President of the Government and its 85 members came from the public administrations, the Youth Councils of Spain and the Autonomous Communities, NGOs working with immigrants and minorities, other social and cultural institutions, and personalities from the worlds of culture, politics and sport.

535. Many activities were carried out in 1995, and autonomous and local committees were formed. The activities were backed up by a big effort to publicize the project, and various publications and a

campaign guide were produced. Some of the materials have been published in Romany and Arabic as well as in the official languages.

536. An evaluation seminar was held at the end of the campaign, which produced recommendations, including one that this work of combatting all forms of racism and intolerance should be continued.

537. The formal closure of the campaign in 1996 was followed by the publication of a guide to documentary resources and the teaching materials used in the campaign and by the production of a instructional video and the campaign report.

538. The Spanish Committee for European Year against Racism was created by a Royal Decree of 13 January 1997 pursuant to the resolution of the Council of Europe of 23 July 1996; the Committee was an organ of State responsible for promoting and coordinating the activities held to mark the Year.

539. The programme of activities included information and awareness campaigns, seminars and conferences, studies and publications, support for the work of NGOs, etc.

540. The Committee issued a manifesto containing a public denouncement of racism and all forms of intolerance, rejection, discrimination and exclusion, as well as an undertaking to support the fight against ideologies and practices which encouraged discrimination and tensions between groups having different ethnic, cultural, national or social roots or religious or sexual practices.

541. From 1993 to 1997 funding was provided for activities of NGOs, especially youth NGOs, designed to combat racism and xenophobia and promote positive attitudes towards differences and friendly co-existence in society.

542. On the subject of reducing economic, social and geographical disparities, chapter I.J mentioned the social integration programme and the gypsy development plan, which include measures to promote equity in access to resources and to prevent and combat discrimination.

543. Furthermore, the existence in Spain of a national health system (ch. VI of the report), an education system (ch. VII), and the Public System of Social Services (section 3 of the Introduction), all of which are public, universal and free, has without doubt played a central role in ensuring equal opportunities and reducing inequalities.

544. All the measures mentioned and discussed earlier in the report have an obvious application in the prevention of discrimination against girls, for gender is one of the topics always cited in connection with discrimination. Moreover, article 3 of the International Covenant on Civil and Political Rights provides that States parties shall undertake to ensure "the equal right of men and women to the enjoyment of all the civil and political rights" set forth in the Covenant.

545. The Convention on the Elimination of All Forms of Discrimination against Women states among many other requirements the obligation:

> "To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interests of the children is the primordial consideration in all cases" (art. 5).

546. Attention may also be drawn to the obligations with respect to non-discrimination against young women in access to education (art. 10).

547. It must be remembered that, unlike the Committee created under the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee established under the Convention on the Elimination of All Forms of Discrimination against Women, although it too receives reports on the legislative, judicial, administrative and other measures adopted to give effect to the provisions of the Convention, may not receive reports from States parties on the failure of other States parties to apply the Convention, and even less receive communications from individuals about such failure. This shows how much more reluctant the international community is to undertake commitments to prevent gender discrimination than to prevent racial discrimination. This point is corroborated by the declarations and reservations made by various States parties in respect of the Convention on the Elimination of All Forms of Discrimination against Women.

548. Discrimination against women is not addressed expressly in the Criminal Code, although article 314 does contain a provision on discrimination against women in employment. This article provides for the punishment of, amongst other acts, serious discrimination against any person in public or private employment on account of his or her sex, and it restores the situation of equality before the law by means of an injunction or administrative penalty making good the damage suffered. This offence is punishable by imprisonment for six months to two years or a fine of six to 12 months.

549. The second programme of opportunities for women (1993-1995) of the Institute for Women of the Ministry of Social Affairs includes several measures affecting children:

(a) Removal of the sexist or discriminatory elements still found in official forms and leaflets;

(b) Promotion of the participation of women on an equal footing in the production and transmission of information: formulation and distribution of curricula in all areas of infant, primary and secondary education, production of teaching materials, teacher training, encouragement of sports, and promotion of research in accordance with the principles of non-sexist education and co-education;

(c) Dissemination of an image of women and girls truly representative of their social reality: formulation of recommendations for the social communication media and awareness campaigns for the public at large;

(d) Programmes on the prevention of teenage pregnancies.

550. The third programme on equal opportunities for women and men (1997-2000) is continuing the policies pursued in the previous two programmes.

551. Many different efforts are being made to correct the differential treatment of men and women in employment. One of the 10 areas of priority action in the third programme concerns the economy and employment and stresses the need for more women to join the labour market. This aim is pursued by various means, including measures under autonomous legislation to create jobs in high-unemployment districts, and the services and grants available to women for the start-up of businesses.

552. Article 28 of Royal Decree 1/1995 of 24 March, which approved the revised text of the Workers' Statute Act, deals with equal remuneration for men and women. This matter had been touched upon in several jurisprudential decisions. A recent ruling of the Constitutional Court (147/95) established that an employer must pay the same wages to men and women "for work of equal value", with the consequence that an enterprise in which half of the female employees were clearly paid less than the male staff was breaking the law.

553. Furthermore, chapter IV bis of the General Social Security Act establishes that some maternity benefits may be enjoyed by women and men without distinction. And article 48 of Royal Decree 1/1995 provides that maternity leave may be requested by men as well as women. According to article 463 of this Decree, leave of absence to care for children for three years is available to all workers, male or female.

554. See chapter I.H for information about the situation of children affected by these situations.

2. Measures adopted by the Autonomous Communities

555. The legislation of the Autonomous Communities referred to in chapter I.B contains provisions designed to combat discrimination on account of any ground or circumstance, relating to children, their families or legal representatives, and to establish measures for the prevention and elimination of discrimination.

556. It also establishes measures to promote equality as a binding principle at several levels of public administration, and specifically in the organization and operation of the child care institutions of the Autonomous Communities, whether run directly or by collaborating agencies, which may not permit any discrimination or differentiated treatment with respect to children's rights. One of the aims of the governmental and independent bodies mentioned in chapter I.H is to ensure respect for the principle of non-discrimination.

557. Some of the Autonomous Communities decided not to refer to non-discrimination in their child protection legislation and merely to cite the application within their territorial jurisdiction of the Constitution and the Convention, while others included express references to the principle of non-discrimination, recalling that it is proclaimed in those two instruments.

558. The Communities which refer expressly to the principle of non-discrimination in their legislation do so in language similar to that of article 3 of the Protection of Minors Act.

559. As stated in chapter I, the children's legislation of the Autonomous Communities, as well as the legislation on social service benefits and the programmes mentioned in chapter I.G, provide that the autonomous authorities must ensure compliance with the schedules and amounts of benefits for children and their families and the rates of the income and other subsidies paid to families having insufficient income for the maintenance, upbringing and training of their children, in order to correct social inequalities.

560. Some of the autonomous legislation on children refers expressly to non-discrimination against foreign children residing in or present in the territory in question in language similar to that of the State legislation, stressing that the public authorities have an obligation to ensure equality of opportunity for the children of immigrants and their access to all the available social facilities and resources.

561. Some of the Communities - Aragón for example - have introduced plans for the social integration of immigrants in coordination with the local authorities of the places where the immigrants settle. The Social Services Institute of Murcia has an interpretation service to facilitate communication with foreign children and families. Catalonia recently established a service specifically for the reception and care of immigrant children from the Maghreb.

562. In 1997 the Autonomous Communities set up their own committees for European Year against Racism consisting of representatives of institutions, NGOs specializing in the fight against racism, and

the localities most directly affected, in accordance with the guidelines and aims indicated by the Spanish Committee for European Year against Racism.

563. Some of the Communities have carried out in conjunction with NGOs specific programmes to combat racism and xenophobia and integrate marginalized groups and individuals and immigrant children into the education system and society. Some of the legislation on children specifies that the public authorities must promote programmes to combat racist and sexist attitudes in society.

564. Institutions such as the social action centres created in Castile and León for persons suffering discrimination are designed to help marginalized individuals and groups to find employment "by means of suitable vocational training", to carry out "grass-roots awareness programmes to facilitate the cultural and social integration of individuals and groups suffering discrimination", to implement "programmes to change discriminatory and segregationalist attitudes", and to "collaborate in the coordination" of other programmes for the "integration in society of specific persons and groups".

565. For seven years now Castile and León has been carrying out an integrated programme for the gypsy community under its comprehensive plan for ethnic minorities, with specific measures to prevent and eliminate racist conduct in society. Other Autonomous Communities have similar integrated programmes designed to ensure equality of opportunities for gypsies, improve their living standards, prevent their social exclusion, and make it easier for them to join the labour market, always bearing in mind that discrimination against gypsies and their exclusion are very deeply rooted in some areas, not to mention the aggravating factor of drug addiction in some groups of the gypsy population. These municipal programmes give particular emphasis to education and combatting truancy and drop-outs.

567. In the financial years 1996 and 1997 Castile and León cofinanced a HORIZON programme for immigrants, in which social awareness measures played a central role in facilitating the integration of immigrants and preventing social rejection and xenophobic conduct.

568. Valencia is planning an integrated development programme which, while respecting the culture and individual characteristics of ethnic minorities, encourages their integration in society all the way from their earliest years at school to their joining the jobs market. The programme's education component will concentrate mainly on truancy and on discrimination in any form. Under the employment component the government of Valencia will be required to create jobs.

569. Galicia's integrated family support programme devotes special attention to rural children under the "Preschool at home" project.

570. In the specific area of drug addiction among children, articles 7 and 8 of Galicia's Drugs Act (2/1996 of 8 May) provide that the autonomous authorities will ensure the establishment of grass-roots prevention programmes in order to boost social solidarity and a positive attitude to individual and collective health and well-being and to reduce the social inequalities and marginalization which encourage drug-taking.

571. In the case of discrimination against girls, the autonomous legislation has incorporated the principle that gender discrimination is prohibited. Some of the Autonomous Communities expressly ban from the communication media messages impairing the dignity of either sex, sexist advertising, sexual stereotypes, and notions of gender superiority or inferiority.

572. Attention must also be drawn to the creation of many institutions specializing in women's affairs in the Autonomous Communities.

573. In addition to the various social services institutes already in existence, the following agencies have come into being in the recent period: in 1993, Aragón's Institute for Women, the Interdepartmental Committee on Women of the Balearic Islands, Catalonia's Interdepartmental Committee for the Advancement of Women, Madrid's Council on Women, the Basque Country's Interdepartmental Committee on Women, and Valencia's Institute on Women; in 1994, the Institute on Women of the Canary Islands, and the Institute for Women's Studies of the University of Valencia; in 1995, the Committee for Coordination and Monitoring of Equality of Opportunities for Women of Asturias; in 1996, the Regional Council on Women of Castile and León, and Navarra's Council on Women; and in 1997, the Council on Women of Cantabria and Galicia's Service for the Promotion of Equality between Men and Women.

574. The specific measures to combat discrimination against women include regulations on compliance with the principle of non-discrimination in information publications, grants to associations for the promotion of equality and research work, equality-of-opportunity awards, grants to local authorities for literacy work, assistance for training in occupations in which women are under-represented, support for private non-profit bodies carrying out legal aid programmes, assistance for business start-ups, and creation of agencies to promote equality of opportunity between men and women in society and at work, such as the one set up in the Basque Country.

575. Some of the Communities have included in their legislation on children the obligation of collaboration between the Administration and the education authorities "to ensure non-sexist education".

576. Equality of opportunities in employment is being achieved by means of strong incentives for the recruitment of women, assistance for the start-up of businesses, and many programmes of vocational training and guidance in social and labour matters, as well as by the provision of child care services and several services offering assistance in the home. In addition, there are health programmes for prevention of cardiovascular ailments, allergies and breast cancer, as well as mother and child programmes. Several of the communities have introduced programmes of holidays and breaks for women with unshared family responsibilities.

3. Measures adopted by social organizations

577. The social organizations working with children, whether or not members of the Platform of Children's Organizations referred to in chapter I.G, clearly work for the prevention and eradication of discrimination, encouragement of integration in school and society, and equality of treatment of children in employment, and thus help to translate the principle of non-discrimination on any kind of ground into a reality and make supportive attitudes a more widespread feature of Spanish society.

578. The leisure and free time programme which one of the Platform organizations has been running since 1990 with a grant from the Ministry of Labour and Social Affairs, mainly in the Autonomous Communities of Castile-La Mancha, Madrid, Castile and León, Valencia, and the Balearic Islands, is targeted on vulnerable children from rural and suburban areas and ethnic minorities, and on immigrant children, children subject to [illegible], and children with physical or mental disabilities who are experiencing serious difficulty [illegible] access to cultural and leisure activities, either because of their socio-economic circumstances or because few such activities are available.

579. The programme seeks to correct situations of vulnerability, to make good the shortage of educational leisure activities and lack of family support by offering a varied range of activities, and to facilitate the integration of immigrant children and children from other cultures through leisure activities. In 1994, 6,197 children and 839 volunteers took part in the programme. In 1995, 6,681 children and 948 volunteers took part and some 900 activities were offered. In 1996,

8,028 children and 1,224 volunteers took part and some 920 activities were offered. In 1997, 9,805 children and 1,777 volunteers took part in the programme.

580. The education for development programmes, mentioned in chapter I, which have been run jointly by two Platform organizations since the 1993-94 school year, seek to encourage young people to develop properly thought-out attitudes to the world, especially to problems deriving from social inequalities, and to equip teachers with methods and materials on education for development, as well as encouraging changes of attitude and behaviour in respect of the economic, social and cultural differences between peoples.

581. In the school year 1993-94 the programme was run in Castile-La Mancha and Madrid. It involved 381 teachers and 8,442 children from 111 schools. In 1994-95 it was run in Castile-La Mancha, Madrid, the Balearic Islands, and La Rioja. More than 300 schools, 1,500 teachers and some 35,000 pupils took part. In 1995-96 it was run in Castile-La Mancha, Madrid, the Balearic Islands, La Rioja and the provinces of Burgos and Valladolid. Fifty thousand pupils and 2,200 teachers from 550 schools took part. In 1996-97 it was run in Castile-La Mancha, Madrid, the Balearic Islands and La Rioja, and in Burgos and Valladolid, Cadiz and Málaga, Aragón and Lleida, and Valencia. A total of 87,439 pupils and 5,195 teachers from 1,110 schools took part. Children's meetings and seminars against racism, xenophobia and social exclusion were held under the programme.

582. In 1997 one of the Platform organizations carried out a project on the creation of an intercultural resource centre with a grant from the Ministry of Education and Culture.

583. This programme consisted firstly of the purchase and collection of various materials, such as stories, music tapes and books of games from different countries, books on cultural traditions, etc. A series of training courses for teachers was then held under the programme in order to instruct them in the use, organization and distribution of all these resources, to encourage them to think about the socio-economic situation of Spain's immigrant population, the cultural characteristics of the countries of origin of local immigrants, and the general methodological principles of instruction in intercultural values, and to increase their awareness of the rights of the child. The purposes of the creation of this intercultural resource centre are to facilitate the integration and social training of immigrant pupils, to use language as the backbone of the teaching and learning process, and to encourage familiarity with the cultures of one's fellow citizens in order to facilitate understanding and tolerance.

584. The materials produced in collaboration with the General Secretariat for Gypsies association under the programme for developing tolerance and respect for diversity in compulsory secondary education was discussed in chapter I.

585. To mark European Year against Racism an association in the Basque Country prepared a "Materials guide" for schools for use in programmes and activities designed to enhance understanding and a positive perception of other peoples and to encourage critical thought about society's injustices and inequalities. Another organization carried out in collaboration with the Education Department of the Basque Country a programme entitled "Mundopolis" based on theatrical performances and other activities and aimed specifically at the whole education community, as a support for teachers and to enhance the awareness of development problems in all young people by promoting such values as respect, tolerance and solidarity through study of various aspects of cultural diversity, human rights, development and gender inequalities from the standpoint of education for development.

586. Several social organizations have stressed that, despite the progress made in the elimination of discriminatory attitudes, the precarious economic, employment and socio-cultural circumstances of the families of immigrant children and children from other races and cultures sometimes create big obstacles

to their effective integration in the school system and that this situation leads them to reject school, thereby making it even more difficult for them to find jobs and take their place in society when they are older.

B. Best interests of the child (art. 3)
(CRC/C/58, paras. 33-39)

1. Measures adopted by the State

(a) Best interests of the child in legislation

587. Act 21/1987 of 11 November amending the Civil Code and the Civil Proceedings Act in matters of adoption, which was discussed in the initial report and referred to in the Introduction to the present report, states in preambular paragraph 4 that adoption should be based on two principles: its function as a tool of family integration and "the benefit of the adopted child, which takes precedence, subject to maintenance of the necessary balance, over any other underlying legitimate interest"; it adds that these purposes "of family integration and the interest of the child as the prime consideration" are to be achieved by the final rupture of the adopted child's links with his previous family.

588. Article 2 of the Protection of Minors Act, discussed in the Introduction and in chapter B.2, states that "in the application of this Act the best interests of the child shall take precedence over any other competing legitimate interest". And article 11.2 states that "the primacy of the interest of the child" shall be a guiding principle of the acts of the public authorities.

589. The final provision of this article (11.7) establishes that measures connected with foster care shall be taken "always with the best interests of the child in mind".

590. Organizational Act 4/1992 of 5 June on reform of the Act on the jurisdiction and procedures of the juvenile courts states in its explanatory introduction that measures applicable to juveniles who have committed acts susceptible of characterization as criminal offences must "take special account of the interest of the child".

591. The Civil Code refers to the best interests of the child in several of its articles:

(a) Article 154.2 states that "parental authority shall always be exercised for the benefit of the children and take account of their personalities";

(b) Article 161 states in connection with the situation of children in foster care and the possibility of parental visits that such visits "may be suspended by the court in the light of the circumstances and the child's best interests";

(c) Along the same lines, article 170.2 states that "the courts may, for the benefit and in the interest of the child, grant the restoration of parental authority if the ground for its suspension no longer exists";

(d) Article 172.4 states in connection with foster care that "in all cases the best interests of the child shall be the aim, and an effort shall be made, when this is not at variance with those interests, to return the child to his own family and to ensure that siblings are entrusted to the same institution or person";

(e) Article 173.4 states in connection with the grounds for termination of foster care that it may be terminated "by decision of the public body having tutorship or guardianship of the child when, after hearing the views of the foster parents, it deems termination necessary for the protection of the child's interests";

(f) Article 176.1 states that "adoption is granted by judicial order, which shall take into consideration the interest of the child to be adopted and the suitability of the adoptive parent or parents to exercise parental authority".

592. The best interests of the child constituted the grounds for Constitutional Court decision 67/1998 of 18 March 1988, referred to in chapters I.C and I.E and in chapter III, which was handed down in response to amparo application 109/9 alleging non-payment of maintenance; the legal arguments supporting the decision were based on the Convention, thus reflecting the additional protection which the Convention accords to children.

593. Article 1 of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption of 29 May 1993, which entered into force for Spain on 1 November 1995, states among its objectives:

> "To establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law".

Article 24 states:

> "The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child".

594. Article 4 of the Hague Convention concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Infants of 5 October 1961 (Spain's instrument of ratification is dated 29 April 1987) states:

> "If the authorities of the State of the infant's nationality consider that the interests of the infant so require, they may, after having informed the authorities of the State of his habitual residence, take measures according to their own law for the protection of his person or property".

(b) Best interests of the child in other measures

595. See chapter I.J for the details of the budgetary allocations.

596. The best interests of the child are established as a guiding principle of all measures adopted under immigration procedures (see also ch. III.A and ch. VIII.A.1). The acts of the public authorities in this area are also governed by the principles set out in article 11.2 of the Protection of Minors Act, which include the primacy of the best interests of the child, as pointed out earlier.

597. This is also the purpose of article 12 of Royal Decree 155/1996 of 2 February, which approved the regulations on the implementation of Organizational Act 7/1985 of 1 July on the rights and freedoms of foreigners in Spain, also cited in section A of this chapter, when it states: "Foreign minors shall be treated within Spanish territory in accordance with the provisions of the United Nations Convention on the Rights of the Child of 1989".

598. In the case of foreign minors seeking asylum, attention is drawn to the comments contained in section A on the distinction between minors benefiting under the "family extension" provision from an asylum application submitted by their parents and unaccompanied minors or minors accompanied by persons other than their parents, who remain within the category of foreign minors in a situation of desamparo.

599. With regard to the placement and care of children in institutions, article 11 of the Protection of Minors Act states as a guiding principle of administrative measures:

> "The public authorities shall pay particular attention to the proper regulation and supervision of the places, facilities and services in which children are usually cared for, with respect to their physical and environmental conditions, hygiene and health standards, human resources, and educational provision, and with respect to the participation of the children and the other conditions which facilitate the exercise of their rights".

Article 21 states:

> "Bearing in mind that children, especially very young children, must have experience of family life, when the public body orders the residential care of a child it shall endeavour to ensure that the child's stay in the institution is as short as possible, except when the child's best interests dictate otherwise.
>
> All services, homes and centres for children must be authorized and accredited by the public body. The public body shall regulate the operation of the specialized services under different schedules and shall enter them in the corresponding register in accordance with the schedule in question, paying particular attention to the service's security and health care arrangements, the numbers and professional qualifications of its staff, and its educational provision, as well as to the participation of the children in its internal operations and to the other conditions which facilitate the exercise of their rights".

600. See also chapter V.H.

601. When it comes to social security benefits, although all Spanish children are entitled to free health care, as will be seen in chapter VI, the best-interests principle is not mentioned in connection with this benefit.

602. The same comment may be made in respect of the other benefits available to children (see ch. VI.C).

2. Measures adopted by the Autonomous Communities

603. The autonomous legislation mentioned in chapter I.B refers expressly to the principle of the best interests of the child as the basis for all the decisions and measures taken by children's institutions in order to deliver the protection and care necessary to their well-being.

604. The same basic principle of protection and the same criterion of action by the administrative authorities and all children's institutions are expressed in different terms in the legislation of the Autonomous Communities: "the precedence of the child's interest over any other competing interest"; "the best interests of the child and the priority attaching to integration in the family and society"; "the precedence of the best interests of the child"; "the primacy of the general interest of the child over any other legitimate interest, the limits to the child's capacity to act being interpreted restrictively"; "the best

interests of children and adolescents: in the determination of these interests particular consideration shall be given to child's wishes and opinions as well as to the specific features of his place in the family and social setting".

605. As some of the Communities (Aragón, Canary Islands, Galicia and Valencia) stipulate, account must be taken in the allocation of public housing to the number of children in the family, and preference must be given to families with disabled children.

606. Some of the action programmes referred to in chapter I.G includes measures on tax allowances, which depend on the number of children for which the family is responsible.

607. The Autonomous Communities have introduced measures to remove the obstacles to the use of public transport by disabled persons.

608. In accordance with these principles, all measures of protection, adoption and foster or institutional care, and the procedures for determining suitability must take into account the child's best interests.

609. The same criterion applies to measures adopted with respect to juvenile offenders, in accordance with Act 4/1992, mentioned earlier.

610. The comments made in the section on measures adopted by the State apply in the Autonomous Communities to foreign children and children seeking asylum.

611. With regard to the placement and care of children in institutions, the Communities have issued regulations on the operation of the institutions, both their own which they run directly and those operated by collaborating bodies. The Community is involved in the coordination, supervision, inspection, monitoring and evaluation of the operation of these facilities, ensuring respect for the rights of the children and compliance with the best-interests principle.

612. This checking of the operation of the institutions and the measures applied to children takes place at least every six months, although more frequent checks may be made in the light of a child's specific circumstances.

613. Children's homes must have a general scheme for provision for education and social training and their own internal rules of procedure, which are subject to regulation.

614. Some of the Communities have established an educational framework containing measures and criteria for the provision of education in all institutions, both their own and those run by collaborating bodies. Furthermore, every child living in an institution must have his own individual education plan, which is subject to periodic review.

3. Measures adopted by social organizations

615. Social organizations concluding agreements with the Autonomous Communities on the management of children's institutions must comply in operating such institutions with the provisions of the State and autonomous legislation concerning the best interests of the child.

616. The best interests of the child is a guiding principle for all the other activities of children's organizations.

617. These organizations stress the need to expand their coordination with the public authorities in order to improve the conditions of the residential care of children.

618. Some organizations say that the vagueness of the best-interests principle sometimes lends itself to a diversity of implementation proposals. The application of the principle may be jeopardized by a failure to take account of cultural diversity or to listen to the child at certain moments, by giving general interests precedence over particular ones, or by the conception of children still harboured by some parents.

619. The organizations often report situations in which the best-interests principle is disregarded by some of the communication media when they do not give sufficient respect to the privacy and self-image of children.

C. The right to life, survival and development (art. 6)
(CRC/C/58, paras. 40 and 41)

1. Measures to guarantee the child's right to life

(a) Measures adopted by the State

620. Reference has already been made in earlier parts of the report (for example, in chapters I.B, I.G and II.B) to the State and autonomous policies and strategies designed to ensure children's proper and comprehensive development.

621. Article 15 of the Constitution states: "All have the right to life and to physical and moral integrity, and may under no circumstances be subjected to torture or to inhuman or degrading punishment or treatment".

622. Article 2 of the Convention on the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on 4 November 1950 and ratified by Spain on 26 September 1979, and article 6 of the International Covenant on Civil and Political Rights, adopted in New York on 16 December 1966 and ratified by Spain on 20 April 1977, both establish the right to life as inherent in the human person.

623. The 1996 Protection of Minors Act states in article 17, in addition to the provisions of article 11 already mentioned in section B of this chapter:

> "In situations of risk of any kind which may impair a child's personal or social development but do not require the assumption of tutorship under the Act, the acts of the public authorities must always guarantee the child's rights and be designed to reduce the risk factors and social problems affecting the child's personal or social situation and to promote the protection of the child and his family".

624. Article 18 provides that when the competent public body considers a child to be in a situation of desamparo it must act in accordance with article 172 et seq. of the Civil Code, assuming tutorship of the child and adopting appropriate protection measures and informing the Government Prosecutor of its action.

625. In addition to the standard treatment of offences against life and physical and moral integrity applying equally to persons of the age of majority, Spain's criminal law contains some specific provisions on this subject.

626. Articles 157 and 158 of the Criminal Code provide for the punishment of acts which intentionally (art. 157) or through gross negligence (art. 158) cause foetal injury or disease which impairs the normal development of the foetus or results in a serious physical or mental defect in the child. These provisions fill a gap in the former criminal legislation, which provided impunity by not punishing these acts as abortion, since they do not cause the death of the foetus, or as infliction of bodily injury (impairment of physical integrity or physical or mental health), since this offence requires a person already born as its victim and in this case the injury occurs before birth. Intentional injury of a foetus (art. 157) is punishable by imprisonment for one to four years, and negligent injury (art. 158) by detention for six to 24 weekends. In both cases the Code stipulates a penalty of disqualification from professional functions if the act was committed in the course of the provision of a health service.

627. The physical development of children is also protected under articles 155 and 156 of the Code, which establish, as seen in chapter II, the invalidity of a minor's consent to acts involving injury or to elective organ transplants, sterilization or sex-change surgery. The consent of a minor's legal representatives is not valid either, such surgery requiring a judicial order; the purpose of these provisions is to protect minors against possible abuse.

628. Article 630 seeks to protect children's health by prohibiting the disposal of syringes and other dangerous implements in such a way as to cause personal injury or transmit diseases or in places frequented by children. The penalty for these offences is detention for three to five weekends or a fine of one to two months. In more general terms, attention must be drawn to the importance for the protection of children of the universal and effective guarantee of the rights to education and health enjoyed by all Spanish children (see ch. II).

(b) Measures adopted by the Autonomous Communities

629. Attention is again drawn to the policies and strategies described in chapter I of the report. It may also be said that all the legislation adopted by the Autonomous Communities in the 1990s, mentioned in chapter I.B, is designed for the protection and comprehensive development of children's personalities through intervention in situations of risk, lack of protection and social difficulty, as well as through education and health measures. The same comment applies to the children's programmes of the Autonomous Communities referred to in chapter I.G.

2. Measures to ensure the registration of the deaths of children and the causes of death (CRC/C/58, para. 41)

630. See chapter VI.B for information on infant mortality.

(a) Measures adopted by the State

631. The measures to ensure the registration of deaths and the causes of death are to be found in the legislation on civil registration:

(a) If a new-born baby does not survive for a full 24 hours outside the womb and/or does not have human form, it is considered to be aborted (art. 171 of the Civil Registry Regulations);

(b) The following persons are required to report the delivery of such babies: the father, mother or closest relative or, in their absence, any person of the age of majority present at the place and time of the birth, the head of the establishment in which (or the head of the family in whose dwelling) the birth took place and, in all cases, the doctor, midwife or health worker attending the birth (arts. 43 to 45 of the Civil Registry Act);

(c) The registry official issues a certificate of the declaration of the death by the persons mentioned above, in accordance with the registration requirements, and immediately places the documents relating to the declaration in the abortions file together with a copy of the certificate (art. 174 of the Civil Registry Regulations);

(d) The information contained in the abortions file is subject to restricted distribution. Access to this information requires special prior authorization, except when the applicants are ascendant relatives of the deceased infant (arts. 21 and 22 of the Civil Registry Act);

(e) If the foetus had acquired the characteristics for it to be considered born for civil purposes, the registration of its death is subject to the same rules as apply to persons of the age of majority. In particular, in matters connected with determination of the cause of death Article 85 of the Civil Registry Act stipulates, firstly, that the registration of the death requires the issue of a medical certificate of the presence of unmistakable signs of death, and, secondly, that in the absence of this medical certificate or if the certificate is incomplete or unclear, or if the registry official deems it necessary, the forensic medical officer attached to the registry office must issue an opinion as to the cause of death after having himself examined the body;

(f) Pursuant to this provision, article 274 of the Civil Registry Regulations requires the medical officer who attended the baby during its last illness, or any other medical officer who recognizes the body, immediately to send to the registry office a death certificate, which must state, in addition to the name, position and registration number of the person signing the certificate, the presence of unmistakable signs of death and the cause of death and, in the form required for registration purposes, the date, time and place of the death and the identity of the deceased child;

(g) Any signs of violent death must be communicated immediately and in detail to the registry official.

(b) Measures adopted by the Autonomous Communities

632. Data on natural population changes and on deaths, disaggregated by cause of death, in the Autonomous Communities are produced under collaboration agreements with the National Institute of Statistics.

3. Measures to prevent children's suicide, ensure the survival of children and prevent the risks to which they may be exposed (CRC/C/58, para. 41)

(a) Measures adopted by the State

633. See also chapter VIII. A.

634. According to article 11.2 of the Protection of Minors Act, cited earlier, one of the guiding principles of the measures adopted by the public authorities with respect to children is "the prevention of any situations which may impair their personal development".

635. See chapter VI.B for information on cases of children's suicide.

(b) Measures adopted by the Autonomous Communities

636. The measures adopted by the Autonomous Communities with respect to children's suicide form part of the regular mental health care dispensed by the health services of each Community in their primary and specialised systems.

637. Some of the health plans expressly include measures to prevent suicides and to treat and monitor persons exhibiting suicidal tendencies; one such measure is the telephone "Hope Line".

638. Some of the health services keep a cumulative record of psychiatric cases treated in the mental health system, including details of suicidal behaviour, to facilitate the monitoring of this phenomenon.

639. In some cases preventive measures are also taken by the school psychology services.

640. Some of the systems for the social care of children give priority to support and psycho-social care activities for children in situations of risk or in need of protection who exhibit a tendency for self-injury.

641. The autonomous children's acts stress that the priority is prevention of potential lack of protection and serious deficits which impair children's comprehensive development, and that priority must also be given to the prevention of juvenile delinquency.

642. Accordingly, the preventive work is designed to prevent and mitigate the socio-economic causes of the deterioration of children's social and family environment and the repercussions on their personal development, to reduce the risk factors for marginalization, to provide information on the available public resources, to prevent truancy and the maltreatment and exploitation of children, to make it easier for children with special difficulties to take their place in society by removing the physical and communication barriers, and to make society and institutions more aware of children's rights.

643. Some of the autonomous acts refer explicitly to the introduction of "social guarantee" programmes designed "to offer adolescents alternatives to rejecting the regular school system and to dropping-out and truancy by providing them with pre-vocational training to facilitate their future entry into the jobs market" (art. 15 of Galicia's Act 3/1997 of 9 June on the family, children and adolescents).

644. These acts assign to local authorities an essential role in the preventive protection of children through community or primary social services working in collaboration with social organizations and with the technical support of the autonomous administration.

645. When it comes to the prevention of juvenile delinquency, special attention is given to "individualized intervention and appropriate treatment for children aged 10 or older but under 18 who exhibit conduct very likely to lead to the commission of criminal offences" (art. 47 of Catalonia's Act 11/1985 of 13 June on the protection of minors). The prevention of social conflicts and delinquency also involves the social services in the implementation of "prevention and reintegration programmes for adolescents with social problems, which shall provide concrete leisure activities, pre-employment activities, training in social skills and coexistence in the family, and any other measures which may contribute to the attainment of the objectives" (art. 69 of Madrid's Act 6/1995 of 2 August on safeguards of the rights of children and adolescents).

646. Some of the autonomous acts, for example Act 1/1997 of 7 February of the Canary Islands on the comprehensive care of minors, place special emphasis on prevention and on "the necessary

information measures in the educational, cultural and social spheres to prevent the harmful effects of the activities of sects" (art. 24).

647. The Communities carry out periodic interdepartmental campaigns for the prevention of sexually transmitted diseases, with special emphasis on AIDS. The health and education departments of the Basque government singled out AIDS, other sexually transmitted diseases and unwanted pregnancies as an area of special attention with respect to adolescents and designed specific projects in which the active collaboration of teachers, who receive support in the form of training, is indispensable. Some 150 schools have taken action under these projects, with the involvement of 580 teachers in classroom activities reaching about 19,000 adolescents.

648. In the case of the prevention of violence, the pedagogical guidance centre of the Bilbao City Council is carrying out a pilot programme under a project initiated by the Council of the European Union with the aim of enhancing adolescents' independence and their awareness of their responsibilities. This programme seeks not only to intervene in cases of violence but also to prevent violence from the pupils' earliest years.

(c) Measures adopted by social organizations

649. The working groups of the Platform of Children's Organizations number among their aims the prevention of the risks to which adolescents may be exposed, with special attention given to violence. Some of the Platform organizations have carried out campaigns to prevent these risks.

D. Respect for the views of the child (art. 122)
(CRC/C/58, paras. 42-47)

1. Measures adopted by the State

(a) The right to express opinions under the Protection of Minors Act

650. The second paragraph of the explanatory introduction to this Act notes that the new legislation brought in since the adoption of the Constitution has accorded to minors the status of holders of rights. Thus, the concept of "being heard if having sufficient judgment" has been extended to the whole legal system in all matters affecting minors, subject to the need for the direct exercise of their rights to be developed gradually.

651. Article 7 accords to minors the right "to participate fully in social, cultural, artistic and recreational life and gradually to become active citizens"; this provision obliges the public authorities to "encourage the establishment of organs responsible for ensuring participation by minors and children's organizations".

652. Article 9 states:

> "1. Minors have the right to be heard both in the family and in any administrative or judicial proceedings in which they are directly involved and which may result in a decision affecting their personal, family or social life.
>
> Minors shall appear in judicial proceedings in a manner appropriate to their situation and degree of development, with due safeguards of their privacy.

/

> 2. Minors shall be guaranteed the exercise of this right either in person or through a person designated by them, if they have sufficient judgment. However, when this is not possible or is not in the minor's interest, his opinion may be expressed through his legal representatives, provided that they do not have an interest in the case or interests which conflict with those of the minor, or through other persons who by reason of their profession or their relationship of special trust with the minor can transmit his opinions objectively.
>
> 3. If a minor requests to be heard directly or through a person designated by him, any denial of a hearing shall be supported by a statement of grounds and communicated to the Government Prosecutor's Office and to the minor and his representatives".

653. Article 11 states as a guiding principle of administrative acts:

> "The public administrations shall give particular attention to the regulation and supervision of the places, facilities and services frequented by children with regard to [...] children's participation and the other factors which help to guarantee their rights".

654. Article 15 states that "in any intervention an effort shall be made to secure the collaboration of the minor and his family and to avoid interference in his school, social or working life".

655. The final provision of this article states:

> "Article 177 of the Civil Code shall be redrafted as follows:
>
>> 1. The adoptive parent or parents and the child to be adopted if aged 12 years or older must give their consent to the adoption in the presence of the judge.
>>
>> [...]
>>
>> 3. The following persons shall simply be heard by the judge:
>>
>> [...]
>>
>>> 3. The child to be adopted if he is aged under 12 years and has sufficient judgment".

(b) The right to express opinions in the family

656. Chapter I.H referred to the international conference on "Evolution of children's role in family life" held in Madrid in December 1994 by the Ministry of Labour and Social Affairs and the Council of Europe in connection with the International Year of the Family.

657. As already reported in chapter I, the Ministry maintains regular contacts through its Office for Social Action, Children and the Family with the Platform of Children's Organizations, which carries out participatory activities for children and played a central part in the organization and conduct of the conference mentioned above.

(c) The right to express opinions at school

658. Article 27.7 of the Constitution, on the right to education, stipulates that teachers, parents "and, when appropriate, pupils shall share in the control and management of all the schools maintained by the

Administration out of public funds, under the terms to be laid down by the law". Pursuant to this provision of the Constitution, article 6.1 (e) of Organizational Act 8/1985 of 3 July on the right to education stipulates pupils' right "to be involved in the operation and life of the school".

659. Article 39.1 (e) of the Act provides for pupil representation from the then higher cycle of general basic education, which began at age 12. The participation of pupils in the adoption of decisions affecting them is effected through the school councils, which must exist in all public schools and schools operated under agreements.

660. The Act creates the National Schools Council and the councils of the various Autonomous Communities. The latter organs have pupil representatives appointed by "the most representative pupils' associations", in the words of article 31.1 (c). The National Schools Council must include representatives of the various education sectors affected, and the Act refers specifically to pupil participation. Article 31.1 (c) states that the representation of the pupils in this State organ must be effected through "the confederations of the most representative pupils' associations". In the case of the regional schools councils, the Act also stipulates that the autonomous legislation should ensure the participation of the pupils concerned, establish their legal status and their right "to take part in the formulation of the initial project" and "to have a say in important decisions: always for pupils aged 12 or older and for under-12s if they have sufficient judgment".

661. Articles 26 and 27 of Royal Decree 732/1995 of 5 May on the rights and duties of schoolchildren refer to "schoolchildren's right to freedom of expression without prejudice to the rights of all the members of the education community and the respect due to the institutions in accordance with the principles and rights set forth in the Constitution".

662. Article 6 establishes the councils' obligation to attend to "the proper exercise of the rights and duties of schoolchildren". Committees on social behaviour consisting of teachers, parents and pupils and chaired by the head teacher are to be created in order to make this commitment fully effective.

663. Schoolchildren are also accorded the right to state their disagreement with educational decisions affecting them; if such disagreement is felt by a group of pupils, it must be expressed through the pupil representatives.

664. Article 20 establishes schoolchildren's right to elect their representatives on the schools council by direct secret ballot. This right also applies in the election of group delegates. The delegates form a committee to perform the functions stipulated in the internal rules of procedure. This committee will always be entitled to examine any documents relating to the school, including the records of the school council, except when the privacy of individuals or the normal procedures of academic assessment may be affected. In addition, the school heads will have to provide the committees with a suitable place for their meetings. The detailed application of this provision will have to be regulated by the statutory rules to be adopted by each school with respect to the regular election of representatives, administration of the elections, and the additional functions of the committees of delegates.

665. Article 10 et seq. of Organizational Act 9/1995 of 20 November on the organization and operation of non-university educational establishments reiterates, in connection with the regulation of school councils in public schools, the right of the pupils' parents and of the pupils themselves to be involved in the school council and it stipulates that they must make up one third of the members. The pupil members of the council enjoy the same rights as other members (teachers, parents, representatives of the administration, etc.).

666. However, pursuant to article 12.1 of the Act pupils in "the first cycle of compulsory secondary education" are not permitted to take part in the selection or dismissal of their school's head teacher. This is the only exception to pupils' participation in the operation of their school, for they are entitled to be involved in all the other activities of the school council.

667. These activities, regulated by article 11.1 of the Act, include the following functions: establishing guidelines for the formulation of the educational project, approving the school's internal rules of procedure, its budget and budget performance, promoting the renovation of the plant and equipment and supervising its maintenance, and imposing punishments, for educational purposes, on pupils whose conduct seriously disrupts the running and atmosphere of the school.

(d) The right to express opinions in the administration of juvenile justice

668. As pointed out earlier, this right is recognized in article 9.1 of the Protection of Minors Act.

669. Organizational Act 4/1992 of 5 June on reform of the Act regulating the jurisdiction and procedures of the juvenile courts sets out a procedure for ensuring that a full hearing is given to minors accused of the commission of an offence.

670. However, the possibility is still open for a future amendment of the Criminal Proceedings Act to ensure, by means of a special prerogative, that when minors appear in criminal proceedings their right to enjoy personal privacy and the other established rights is fully respected.

(e) The right to express opinions in institutional life

671. As already mentioned in chapter II, in proceedings concerning the placement of a minor in an institution for reasons of mental disturbance, the judicial authority must examine the minor in person before ruling on the placement application (art. 211 of the Civil Code).

672. Following such placement the competent court, whenever it deems fit and in any event every six months, must formally obtain information as to whether the placement should continue. To this end it must again examine the minor in person and hear an expert report.

673. If in addition to placement in an institution it is argued that the minor should be declared legally incapable, before issuing its ruling the court must hear the minor's closest relatives, examine the minor in person, and hear an expert report; without prejudice to the evidence submitted by the parties, it may formally request any other evidence that it deems pertinent (art. 208 of the Civil Code).

674. If some new circumstance comes to light after the ruling, the court may be requested to issue a new ruling to revoke or to amend the scope of the minor's legal incapacity. Once again, the court must examine the minor in question (arts. 212 and 213 of the Civil Code).

675. For the purposes of committing a minor in a situation of desamparo to a residential facility, both and the State and all the autonomous legislation establish as a requirement for any protection measure that the minor's opinion must be heard, for these are after all measures which affect him personally.

(f) The right to express opinions in asylum proceedings

676. As pointed out in chapter III.A in connection with the principle of non-discrimination, Spain's asylum legislation does not contain a special procedure or even any specific requirements with regard to asylum applications by minors.

677. Furthermore, the recent resolution of the Council of the European Union on unaccompanied minors who are nationals of third countries (97c 221/03. DOCE, 19.7.97), which deals with the details of asylum proceedings in respect of unaccompanied minors, makes no reference to the need to obtain the minor's opinion concerning the proceedings, although it does specify some circumstances in which the minor in question must be interviewed.

678. However, a minor's right to be heard in proceedings for the consideration of his asylum application is guaranteed by the Protection of Minors Act itself, article 9 of which, as seen earlier, provides for a minor's right to be heard in any administrative or judicial proceedings in which he is directly involved or which may result in a decision affecting his personal, family or social life.

679. It may be taken that this provision makes it mandatory not only for an unaccompanied minor who has submitted his own application for asylum to be given a hearing but also for minors to be heard, for example during the processing of asylum applications submitted by their parents, if this is possible, opportune and/or convenient, for the decisions on such applications also affect the minors' "personal, family and social life".

(g) The right to express opinions in civil and criminal legal proceedings

680. Minors may appear in civil proceedings as parties or as witnesses.

681. Although minors possess the capacity to be a party to legal proceedings of their own right, they lack procedural capacity since they do not enjoy full exercise of civil rights, and therefore a legal representative must act for them in the proceedings themselves; this does not apply to emancipated minors (arts. 314 and 323 of the Civil Code).

682. Legal representation may be undertaken by parents possessing parental authority, acting either jointly or singly with the other's consent (arts. 162, 145 and 156 of the Civil Code) or, failing that, by a tutor (art. 222). In the event of a conflict of interests between the parents and the minor, an official legal representative is appointed (arts. 163 and 299-302). If a minor is represented by a tutor, the tutor must hold judicial authorization "to bring proceedings on behalf of wards" except when the matter is urgent or of little account (art. 272.3).

683. According to article 1246 of the Civil Code, children aged under 14 may not appear as witnesses in civil proceedings. However, article 647 of the Civil Proceedings Act appears to allow their appearance as witnesses when it says that children under 14 do not have to swear an oath. The courts have resolved this contradiction in practice by ruling that the inability of children to appear as witness is limited to cases in which the evidence relates to obligations. Children do give evidence in the everyday practice of the courts, but the restriction comes into play in the assessment of their evidence.

684. There is also a distinction between appearance as parties and appearance as witnesses in criminal proceedings.

685. Article 789.5 of this Act provides that the proceedings must take place in a juvenile court when all the accused are aged under 16.

686. It should also be borne in mind that article 9 of Organizational Act 4/1992 of 5 June amending the Act on the jurisdiction and procedures of the juvenile courts states:

> "The juvenile courts are competent to hear: (1) cases involving acts committed by children aged 12 years or older but under the age of criminal responsibility fixed in the Criminal Code

> [16 years] when such acts are characterized as crimes or offences in the criminal law. If the perpetrator of the act is aged under 12 years he shall be placed, when appropriate, in the care of the administrative institutions for the protection of minors".

687. With regard to the possibility of minors laying charges in criminal proceedings, their capacity to be a party follows the general rule but a legal representative must act for them in the proceedings.

688. There is no restriction on the appearance of minors as witnesses in criminal proceedings, and they enjoy the protection of Organizational Act 19/1994 of 23 December on the protection of witnesses and experts in criminal actions.

(h) The right to express opinions in administrative proceedings

689. Reference has already been made to article 9 of the Protection of Minors Act in connection with the opportunities for children to be heard in administrative proceedings and the situations in which they may act.

690. See chapter I.K on measures to make families and the general public aware of children's right to express their opinions and on the training of professionals in this area.

2. Measures adopted by the Autonomous Communities

691. Various pieces of autonomous legislation refer expressly to children's right to be informed about protection measures and to express their opinions and be given a hearing in whatever procedures are introduced by the administrations, especially when decisions affecting their personal, family or social life may be adopted.

692. Several legal provisions agree on the guarantee of this right:

Article 3.4 of Act 19/1989 of 14 December on the protection of minors (Aragón);

Articles 22.2 (g) and 53.1 (o) of Decree 79/1995 of 18 April on declarations of desamparo and protection measures (Aragón);

Article 13 of Decree 238/1994 of 28 December on the organization and operation of centres for the protection of minors (Aragón);

Article 11 of Act 1/1995 of 27 January on the protection of minors (Asturias);

Article 8 of Act 7/1995 of 21 March on the care and protection of minors (Balearic Islands);

Articles 48 and 86 (g) of Act 1/1997 of 7 February on the comprehensive care of minors (Canary Islands);

Articles 12, 20 and 24 of Decree 66/1992 of 7 September approving the regulations on administrative proceedings for adoption, tutorship, guardianship and foster care of minors (Cantabria);

Article 8 of Act 5/1995 of 23 March on solidarity (Castile-La Mancha);

Article 14 of Decree 57/1988 of 7 April issuing regulations on the protection of minors (Castile and León);

Article 2 of Act 12/1996 of 29 July on parental authority (Catalonia);

Articles 3 and 11.3 of Act 8/1995 of 27 July on the care and protection of minors, amending Act 37/1991 of 30 December on measures for the protection of minors and on adoption (Catalonia);

Article 12 of Act 4/1994 of 10 November on the protection and care of minors (Extremadura);

Articles 8 and 12 of Act 3/1997 of 9 June on the family, children and adolescents (Galicia);

Article 13 of Act 4/1998 of 18 March on minors (La Rioja);

Articles 3, 52 and 73 of Act 6/1995 of 2 August on safeguards of the rights of children and adolescents (Madrid);

Article 5 of Act 3/1995 of 21 March on children (Murcia);

Articles 3, 15 and 44 of Act 1/1993 of 19 February on public schools (Basque Country);

Article 39 of Act 7/1994 of 5 December on children (Valencia).

693. In this legislation the Autonomous Communities stress the importance of the free expression of opinions by children and refer both to the advancement and participation of children in various spheres such as their immediate social environment, cultural activities, the school community, and the operation of children's centres.

694. In addition to the services provided for in the legislation, some of the Communities have created others such as children's hotlines and post boxes, which offer children an opportunity to say what they want and to be given a hearing. See also chapter I.H.

695. In several of the Communities the annual celebration of Universal Children's Day on 20 November (see chapter I.H) provides an occasion for children to have their opinions heard.

3. Measures adopted by social organizations

696. Children's organizations comply with the rules on respect for children's opinions in their work with children and their education projects and in the residential care which some of them provide under agreements with the Autonomous Communities: they regard children as individuals and active holders of rights who are capable of expressing their own opinions.

697. In collaboration with the Ministry of Labour and Social Affairs, one of the Platform organizations produced a study on standards of quality in residential care and a handbook on good practice in the residential care of children setting out standards of education and communication which take account of the need to respect children's opinions.

698. In 1994 another of the organizations, in collaboration with a number of European bodies, made a survey of children in various Autonomous Communities with the principal aim of learning what they thought about their own families. This survey is included in an evaluative and comparative study of the

way in which children perceive their families in five countries of the European Union (Belgium, France, Netherlands, Spain and Portugal). The findings of this study were translated into Spanish and subsequently published by the Ministry under the title "What do children think of their families?"

699. The education for development programmes described in chapter I and in section A of the present chapter encourage the young participants to think critically about the various social problems. In addition, the periodical Jatun Sunqu has an opinions page open to schoolchildren.

700. The periodical Nuestro Rollo published by one of the Platform organizations is an organ for the free expression of children's opinions.

701. The leisure and free time programme seeks to enhance children's self-management and sense of responsibility, as well as good habits, attitudes and values, by developing their capacity to take sensible decisions on the use of their free time.

702. Another of the Platform organizations has an internal children's body, democratically elected at assemblies, where children can state their views about the running of the organization itself and about social issues. This organization holds children's encounters for three to four hundred children from all over Spain, which examine the family, school, the communication media, policies, local districts or towns, the Church, etc. The most recent of these encounters was held in Huesca in July 1997.

703. One of the Platform organizations created an Internet site called "Youth thinks".

704. The training programmes run by the Platform organizations stress children's right to express their opinions and to participate.

705. One of the organizations created "Our Phone", a free national telephone service which listens and gives advice both to children with problems and to adults responsible for children who want to report or discuss some problem affecting a child. "Our Phone" holds at least two annual theoretical and practical training courses for the volunteers who man the lines and give advice to callers. Mexico's "Our Phone", initiated in August 1996, has the same operational arrangements and aims as the Spanish service.

706. Other activities of social organizations which encourage the free expression of children's opinions are mentioned in chapters I.G and I.K.

IV. CIVIL RIGHTS AND FREEDOMS

707. Generally speaking, as has been explained in detail in chapter I.C, the civil rights and freedoms of children set forth in the Convention are expressly recognized both in the Spanish Constitution and in the Legal Protection of Minors (Organization) Act, 1/1996 of 15 January, partially amending the Civil Code and the Civil Proceedings Act. Specifically, article 3 of that Act establishes that "minors shall enjoy the rights conferred on them by the Constitution and international treaties to which Spain is a party, especially the Convention on the Rights of the Child...".

708. Chapter II of the same Act includes many of the rights set forth in the Convention, as already described in chapter I.C.

A. Name and nationality (art. 7)
(paras. 49-53 of the general guidelines (CRC/C/58))

1. Measures adopted by the State

709. The Civil Code, after establishing in its article 29 that "birth shall determine personality", adds in its article 30 that, for civil purposes, only a foetus that has human form and survives 24 hours entirely separated from its mother's body shall be regarded as a newborn child. Accordingly, the Civil Registration Act and Regulations permit the registration of a birth only once that period of time has elapsed (arts. 40 and 42 of the Civil Registration Act).

710. With regard to this legal provision and those of article 7 of the Convention, on 3 September 1996 the Directorate-General of Registers and Notaries (DGRN) of the Ministry of Justice issued a decision in response to a request, by a woman whose child had survived only five-and-a-half hours after birth, to register its birth irrespective of that time limit.

711. The Directorate-General, having regard to article 7 of the Convention, articles 8 and 14 of the European Convention on Human Rights and the relevant provisions of the Civil Code and of the legislation on registration, refused the application for registration, on the basis, inter alia, of the following argument:

> "Finally, [the fact] that article 7 of the Convention on the Rights of the Child provides that 'the child shall be registered immediately after birth and shall have the right from birth to a name, [and] the right to acquire a nationality...' is not a decisive argument. The purpose of that Convention is to safeguard the fundamental rights of children who subsequently survive, but its provisions may not interfere with the modalities established by each domestic legal system with a view to securing registration immediately upon birth (lato sensu, inclusion in the Spanish record of abortions is a modality of registration), or in the conditions, which it is for each domestic legislation to determine, that a birth must fulfil in order for the civil personality of the newborn child to be recognized. Whether these conditions consist of so-called independent viability (degree of maturity of the foetus), dependent viability (ability of the foetus to continue to survive in the absence of internal defects), or statutory viability, i.e. the length of time survived (the system adopted by our Civil Code) is a decision that each country can and must take in accordance with its own tradition and reasons of legislative policy."

712. Article 42 of the Civil Registration Act provides that any person may inform the Civil Registrar of a birth, and article 43 enumerates the persons who are obliged to ensure that the birth is registered and those who are obliged to give immediate notice thereof in writing.

713. Persons so obliged must submit the declaration of birth promptly: within eight days of the delivery as a general rule, or within 30 days when there is deemed to be good cause for the delay (arts. 42 of the Civil Registration Act and 166 of the Civil Registration Regulations).

714. The following persons are obliged to ensure that the birth is registered by means of the declaration: (1) the father; (2) the mother; (3) the closest relative, or, failing that, any person having attained the age of majority present at the place of birth when it occurs; (4) the head of the establishment or household in the premises in which the birth has taken place; and (5), in the case of abandoned newborn children, the person who has given them shelter (art. 43 of the Civil Registration Act).

715. As examples of measures taken to promote registration by removing social or cultural obstacles, it should be mentioned that the obligation to promote registration extends to the doctor, midwife or

auxiliary health worker who has assisted the birth (ibid. art. 44), and that article 169 of the Civil Registration Regulations lays down special rules to facilitate the registration of abandoned or exposed children.

716. It should also be mentioned that these regulations obviously also cover children born while their parents' applications for asylum are being processed, as well as refugee and displaced children.

717. Given that the Spanish Civil Register has been in operation since 1870, that it is an institution fully accepted by society, and that cases of failure to register a birth are rare, no special measures have been taken to sensitize public opinion with regard to the issue. Nonetheless, mention should be made of a DGRN Circular of 29 October 1980 which, taking up a proposal of the Justice Committee of the Congress of Deputies of 2 October 1980, recalls the need for gypsies and other minority groups to register births that have occurred in Spain.

718. As for the elements of the child's identity, in accordance with article 41 of the Civil Registration Act, registration of newborn children certifies the fact, date, time and place of the birth, and the sex, given name and, where applicable, filiation of the child registered.

719. Pursuant to article 53 of the same Act, persons are designated by their given names and their father's and mother's family names as determined by filiation. Every Spaniard must be identified by two family names, the first being that of the father and the second, the mother's first family name (arts. 109 of the Civil Code; 53 and 55 of the Civil Registration Act; 194, 199 and 213 of the Civil Registration Regulations).

720. At the time of drafting of this report, various draft laws were being tabled, amending the Civil Code and the legislation on registration so as to permit, if both parents so decide, the mother's name to precede that of the father when the child's birth is registered within the prescribed time limits.

721. As for children born as a result of assisted or artificial reproductive techniques, article 7 of Act 35/1988, of 22 November, provides that:

> "1. The filiation of children born as a result of assisted reproductive techniques shall be regulated by the rules in force, except as otherwise provided in the special rules contained in this chapter.
>
> 2. In no case shall the entry in the Civil Register reflect information from which the form of reproduction involved may be inferred."

722. Although the Civil Register is in the public domain, so that any person may request certification of the entries it contains, certain data are designated as restricted and require special authorization in order to be accessed. Article 21.1 of the Civil Registration Regulations provides that:

> "The following data shall be not made public without special authorization: adoptive, non-matrimonial or unknown filiation or circumstances revealing such filiation; the date of the marriage or the date of birth as recorded on the birth certificate, if the former was subsequent to the latter or took place during the period of 180 days prior to the birth; and any change of the name "Foundling" or other analogous or otherwise inappropriate information."

723. Such authorization will, however, not be necessary where the person requesting the certification is "the person registered or his or her ascendant relatives, descendants or heirs..." (art. 22 of the Civil Registration Regulations).

724. Biological matrimonial filiation is legally determined by registration of the child's birth together with registration of the parents' marriage (art. 115.1 of the Civil Code).

725. Non-matrimonial maternal filiation is legally determined merely by the reference to the mother in the registration of birth within the prescribed time limits (ibid. art. 120.4).

726. With regard to the determination of non-matrimonial paternity - including non-matrimonial maternity in extreme cases in which article 120.4 of the Code does not apply - the law, in accordance with the principle proclaimed in article 39 of the Constitution, facilitates investigation of paternity or maternity so that, if one or the other is not acknowledged voluntarily by the parents, the child has a lifelong right to take judicial action to claim filiation (art. 133 of the Civil Code).

727. As already indicated in chapter II, the right of the child to know the identity of his or her biological parents does not disappear by virtue of the fact that the child has since been adopted, because, as can be seen from article 22.1 of the Civil Registration Regulations, adopted children who have reached the age of majority have the right to obtain written certification of their birth, stating, where applicable, their previous natural filiation. Similarly, minors may obtain this information from the Register upon authorization by the competent judge.

728. For the right to be cared for by the parents, see chapter V.A.

729. As for the right of children to acquire a nationality, article 17 of the Civil Code establishes that the following are Spaniards by origin:

(a) "Those born of a Spanish father or mother." Spanish nationality is attributed automatically, regardless of whether the filiation is matrimonial or non-matrimonial or whether the child was born in Spain or elsewhere. Likewise, no account is taken of cases in which the foreign law of the place of birth or of the foreign parent attributes a different nationality to the child, or in which such attribution is a voluntary act on the part of the parents, who, in accordance with the foreign legal order, have opted for that nationality;

(b) "Those born in Spain of foreign parents, if at least one of the parents was also born in Spain. In this case, the children of diplomatic or consular officials accredited in Spain are excluded." In these cases the fact that the foreign law may have attributed another nationality to - or that the father, the mother or both may have opted for a foreign nationality for - their child is also immaterial;

(c) "Those born in Spain of foreign parents, if both are stateless, or if neither parent's national legislation attributes a nationality to the child." The purpose of this provision is evidently to eliminate or reduce cases of statelessness;

(d) "Those born in Spain whose filiation remains undetermined. For such purposes, minors whose first known place of residence was Spanish territory shall be presumed to have been born in Spanish territory."

730. As regards foreign minors, see chapters II, III.A. 1 (f) and VIII.A.1.

731. Under article 19 of the Civil Code, a foreign minor adopted by a Spanish national acquires original Spanish nationality from the moment of adoption.

732. If the foreign minor is or has been subject to the parental authority of a Spaniard, he has the right to opt for Spanish nationality. To do so, he will have to make a declaration of such election, through a legal representative if he is under 14 years of age; with the assistance of the legal representative if over that age; and unassisted if he has reached the age of majority (art. 20 of the Civil Code).

733. It is also possible for foreign minors to acquire Spanish nationality through the granting by the Government of the Carta de Naturaleza (Naturalization Card), or by virtue of having resided in Spain for a specified time. For this purpose, the child must submit a request, which will be made by his legal representative if the child is under 14 years of age; with the assistance of the legal representative if he is over that age; and alone, without the need for additional capacity, if he is emancipated (ibid. arts. 21 and 22).

734. As for the right to asylum, the Asylum (Regulation) Act, to which detailed reference is made in chapter VIII.A.1, provides in its article 35 that recognized refugees may request Spanish nationality as provided for in article 22.1 of the Civil Code.

735. Although the required period of continuous legal residence immediately prior to the application for Spanish nationality on grounds of residence is generally 10 years (two years if the applicant is a national of an Ibero-American country, Andorra, the Philippines, Equatorial Guinea or Portugal, or of Sephardic origin), the Civil Code provides for a period of only five years for asylum-seekers or refugees. Accordingly, a refugee minor may request Spanish nationality after five years' residence, in cases where he is emancipated at the time of the application; if at that time he has attained 14 years of age, he will be assisted by his legal representative. If he is under 14 years of age, after the period of five years' legal residence has elapsed, the application for Spanish nationality will be made on his behalf by the legal representative (art. 21.2 of the Civil Code).

736. As for displaced persons or "refugees from violence", Spanish legislation treats these persons within the context of application of its aliens' legislation and, except where otherwise expressly provided in the Asylum (Regulation) Act, they do not enjoy the privileges accorded to refugees.

737. Displaced persons may request Spanish nationality after 10 years' legal residence pursuant to article 24.4 of the Civil Code. The First Additional Provision of the Asylum (Regulation) Act allows for the possibility for any displaced person to request recognition of his refugee status under the relevant Geneva Convention and the Asylum Act. This Additional Provision offers displaced persons the entitlement to annually renewable residence permits, the possibility to participate in reception and integration programmes provided for refugees, the social benefits provided for under articles 15 and 30 of the Regulations, the possibility of being granted work permits, and, above all, the right not to be returned to the country of the conflict.

2. Measures adopted by the Autonomous Communities

738. In addition to complying with the national legislation referred to above, the Autonomous Communities, in recently enacted legislation governing children, are explicitly setting forth the right of the child to a name and nationality from the moment of birth. In the case of children in the guardianship or custody of the autonomous administration and cases where the parents have not registered the child, the administration will make the necessary arrangements for registration, once appropriate inquiries have been made and the necessary documentation has been collected.

739. Similarly, some Autonomous Communities regulate matters relating to the correct and unequivocal identification of the newborn child, applying the most accurate and up-to-date techniques

and issuing a Child's Identity Document. In this connection mention may be made of article 5 of Andalusia's Act 1/1998 of 20 April, governing the rights and care of children; article 3 of Extremadura's Act 4/1994 of 10 November, on the protection and care of minors; article 8(c) of Galicia's Act 3/1997 of 9 June, on the family, children and adolescents; article 9(d) of La Rioja's Act 4/1998 of 18 March, on minors; article 11.1(a) of Madrid's Act 6/1995 of 28 March, guaranteeing the rights of children and adolescents; and article 7 of Murcia's Act 3/1995 of 21 March, on children.

B. Preservation of identity (art. 8)
(CRC/C/58, para. 54)

1. Measures adopted by the State

740. See also section A of this chapter.

741. The Criminal Code groups together various offences with the aim of preserving children's identity and ensuring that they are not deprived of the elements necessary for their identification.

742. Article 200 punishes fraudulent registration of a non-existent birth, the concealment (abandonment of a newborn child to conceal the fact of its birth) or handing over of a child to third parties in order to change or modify its filiation), and the substitution of one child for another (altering children's filiation). The first three of these acts are punishable only when committed deliberately and with the intention of changing the child's civil status, in which case the perpetrators are liable to six months' to two years' imprisonment, with the additional possibility, where the offenders are ascendant relatives, of specific disqualification from the right to exercise parental authority. However, substitution of one child for another may either be intentional, in which case the penalty is one to five years' imprisonment, or the result of gross negligence on the part of the hospital staff responsible for children's filiation, in which case the penalty is six months' to one year's imprisonment.

743. Filiation of children is also protected by article 221, which punishes the handing over, for financial reward, of a son or daughter, descendant or any other minor, even where there is no relationship of filiation or blood, circumventing the statutory procedures for custody, reception or adoption, with a view to establishing a relationship analogous to filiation. The penalty provided for such "trading in children" is one to five years' imprisonment and specific disqualification from exercise of parental authority for four to 10 years in the case of "sellers". The person receiving the child (the "purchaser") and the intermediary shall be liable to the same punishment, even when the child was handed over in a foreign country. Where these acts were committed with the involvement of crèches, schools or other premises or establishments for children, the offenders shall be liable to specific disqualification from the exercise of those activities for a period of two to six years, and the establishments concerned may be closed down permanently, or temporarily for a period not exceeding five years in the latter case.

744. Article 31 of the instrument of ratification of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, concluded in The Hague on 29 May 1993, to which Spain is a party, provides that "without prejudice to the provisions of article 30, personal data obtained or transmitted in accordance with the Convention, in particular those referred to in articles 15 and 16, may not be used for purposes other than those for which they were obtained or transmitted."

C. Freedom of expression (art. 13)
(CRC/C/58, para. 55)

1. Measures adopted by the State

745. See also chapter III.D.

746. Paragraph 1 of article 20 of the Spanish Constitution recognizes "the right freely to express and disseminate thoughts, ideas and opinions by word, in writing or by any other means of communication", thereby covering all possible aspects of freedom of expression in the broadest sense. The legal interest protected by the establishment of this constitutional right is not freedom of personal opinion, but the private or public communication of ideas or opinions; hence, the Constitution does not confine itself to establishing that right, but also establishes the conditions for its exercise, by specifying that such thoughts, ideas and expressions shall be expressed freely - a condition which presupposes respect for the opinion expressed.

747. Paragraph 2 of the same article establishes an absolute and unconditional prohibition on any form of prior censorship. This prohibition protects all the rights recognized in paragraph 1.

748. Paragraph 4 indicates the limits to freedom of expression, which is bounded by respect for fundamental rights, and in particular the rights to honour, privacy, personal reputation; and by the need for protection of youth and childhood.

749. Article 8 of the Protection of Minors Act (1/1996) establishes that:

> "1. Minors shall enjoy the right to freedom of expression as provided for under the Constitution. This freedom of expression is also limited by protection of the privacy and reputation of the minor himself, set forth in article 4 of this Act.
>
> 2. In particular, the right of minors to freedom of expression extends to:
> (a) publicization and dissemination of their opinions;
> (b) publication and production of media messages;
> (c) access to any aid that the public administration may establish for that purpose.
>
> 3. The exercise of this right shall be subject to any restrictions provided by this Act to guarantee respect for the rights of others or the protection of public safety, health and morals or public order."

750. Article 9 includes as an extension of the right to freedom of expression the right of children to a hearing "in the family as well as in any administrative or judicial proceedings in which they are directly involved and which may lead to a decision affecting their personal, family or social circumstances."

751. In addition to the remedies available under Spain's domestic order to guarantee the right of the child to freedom of expression, mention should also be made of remedies under international law.

752. Children benefit from the system of guarantees established by the European Convention on Human Rights, to which Spain is a party. Article 10 of that Convention recognizes the right of "everyone" - whether or not a minor - to freedom of expression, restricting limitations on that right to such measures as are "... necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health

or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".

2. Measures adopted by the Autonomous Communities

753. Reference was made in chapter III.D to legislation of the Autonomous Communities setting forth the right of children to express opinions and to receive a hearing.

754. Children's freedom of expression, which extends to the publicization and dissemination of their opinions and publication and production of media messages, is expressly established in article 8 of Galicia's Act 3/1997 of 9 June, on the family, children and adolescents; and in article 31 of La Rioja's Act 4/1998 of 18 March, on minors.

3. Measures adopted by social organizations

755. See chapters I.G and K and III.D.

D. Freedom of thought, conscience and religion (art. 14)
(CRC/C/58, paras. 56-57)

1. Measures adopted by the State

756. As already indicated in paragraphs 129-133 of the initial report, the right to freedom of thought, conscience and religion is recognized in article 16, paragraph 1, of the Spanish Constitution. Its content, according to article 2 of the Religious Freedom (Organization) Act, 5/1980 of 5 July, includes the rights to hold one's own beliefs, or to hold no belief, to change one's religion or to abandon one's religion, freely to express one's own beliefs or absence of beliefs or to refrain from making them public, to practise the rites of the religion and to receive religious ministration, to receive and impart religious education of all kinds, and to meet publicly for religious purposes or congregate in order to engage in communal religious activities.

757. Article 6, paragraph 1, of the Protection of Minors Act (1/1996) recognizes the right of minors to freedom of ideology, conscience and religion, while stating in paragraph 2 that "the rights flowing from this freedom are limited only as prescribed by this Act and by respect for the fundamental rights and freedoms of others"; without prejudice, of course, to the provisions of other domestic legislation relating to this right.

758. A problem arises concerning the exercise of freedom of conscience, religion and belief by children when those beliefs come into conflict with their own right to life. This happens in the case of conscientious objection to medical treatment essential to save the child's life. The only form of such conscientious objection that has come to the attention of the courts in Spain concerns blood transfusions, which are prohibited by Jehovah's Witnesses on the basis of their interpretation of the Bible.

759. The State cannot neglect to protect the lives of children to the extent of exonerating persons responsible for care of the child who, on the basis of their own beliefs and/or those of the child, fail to provide medical treatment which could save the child's life.

760. No account is taken of the wish of a child under 13 years of age, rooted in his or her own firm religious beliefs, not to submit to treatment; but strong religious convictions on the part of those responsible for the child are regarded as mitigating circumstances by those applying the law; kinship by

blood is not regarded as an aggravating circumstance, and may even predispose the court partially to exonerate those responsible, as occurred in a judgement of the Supreme Court of 19 June 1997.

761. The general framework of legal guarantees provided by article 16 of the Spanish Constitution and article 2 of the Religious Freedom (Organization) Act also serves to protect religious freedom in education. Article 27, paragraph 3, of the Spanish Constitution makes special reference to "the right of parents to ensure that their children receive religious and moral instruction that is in accordance with their own convictions".

762. Both the Right to Education (Organization) Act, the General Education (Organization) Act and the judgement of the Constitutional Court of 13 February 1981 proclaim the non-denominational (neutral) role of the State in educational matters.

763. The 10 articles of the Agreements of 10 November 1992 recognize the right to religious instruction in the Jewish, Evangelical and Islamic faiths at all levels in the schools operated under agreements.

764. With regard to Roman Catholicism, Spain's predominant religion, the Second Additional Provision of the General Education (Organization) Act provides that:

> "The teaching of religion shall be in accordance with the provisions of the Agreements on Education and Cultural Matters concluded between the Holy See and the Spanish State on 3 January 1979 and, where applicable, with the provisions of other such agreements as may be concluded with other religious faiths. For such purposes, and in accordance with the provisions of such agreements, religion shall be included as a topic or subject at the corresponding educational levels; its provision shall be compulsory for the schools, and attendance voluntary for the pupils."

765. Royal Decree 1007/1991 of 14 June, on compulsory secondary education, Royal Decree 1700/1991 on higher school examinations, and Royal Decree 1006/1991 on primary education, provide that:

> "Given the voluntary nature of such courses for pupils, the corresponding qualifications shall not be taken into account in the vacancy announcements which, within the education system and for the purposes thereof, are made by the public administrations and in which account is taken of the students' academic records."

766. As is to be expected, the European Convention on Human Rights, ratified by Spain, includes, in its article 9, the right to freedom of thought, conscience and religion. Consequently, the exercise of this right by children is covered by the system of guarantees under that Convention, which includes the possibility of individual application to the European Court of Human Rights.

767. With a view to protecting children from harmful sects, the Protection of Minors Act provides that "when a minor's or the parents' membership of an association prevents or jeopardizes the minor's full development, any interested person, natural or legal person or public entity may apply to the Government Procurator's Office to initiate any legal measures it may deem necessary."

2. Measures adopted by the Autonomous Communities

768. Some of the Autonomous Communities' legislation on children explicitly recognizes these freedoms.

769. Thus, mention may be made of article 4(c) of Aragón's Act 10/1989 of 14 December, on protection of minors; article 12 of Asturias' Act 1/1995 of 27 January, on protection of minors; article 4 of Decree 272/1990 of 20 December approving the statutes of its own establishments and services, of Castile and León; article 19 of Catalonia's Act 11/1985 of 13 June, on protection of minors; article 3(a) of Extremadura's Act 4/1994 of 10 November, on protection and care of minors; article 8 of Galicia's Act 3/1997 of 9 June, on the family, children and adolescents; article 14 of La Rioja's Act 4/1988 of 18 March, on minors; and article 7.2 of Valencia's Order of 14 May 1991 approving the Statute of Children's and Young People's Care Centres.

770. Similarly, some Autonomous Communities provide for the protection of young people against sects. Mention may be made of article 24 of the Canaries' Act 1/1997 of 7 February, providing comprehensive care for minors; and of article 53 of Catalonia's Act 8/1995 of 27 July, on care and protection of children and adolescents.

3. Measures adopted by social organizations

771. See chapter III.D.

E. Freedom of association and peaceful assembly (art. 15) (CRC/C/58, para. 58)

1. Measures adopted by the State

772. Article 22 of the Spanish Constitution contains a formulation that fundamentally affects the process of setting up associations and the question of unlawful associations. Article 48 includes, among the principles governing social and economic policy, "the free and effective participation of young people in political, social, economic and cultural development".

773. Article 7 of the Legal Protection of Minors (Organization) Act, 1/1996 of 15 January, partially amending the Civil Code and the Civil Proceedings Act, provides that:

> "1. Minors have the right to full participation in the social, cultural, artistic and recreational life of their environment, as well as to gradual initiation into active citizenship. The public authorities shall promote the setting up of participatory bodies for minors and of social organizations for children.
>
> 2. Minors have the right to associate, a right which, in particular, includes:
>
> (a) The right to membership of youth associations and party political and trade union organizations, in accordance with the law and their statutes;
> (b) The right to promote children's and youth associations and to register them in accordance with law. Minors shall comprise part of the governing bodies of such associations.
>
> To enable children's and youth associations to comply with their civil obligations, they shall be required to appoint, in accordance with their statutes, a representative with full legal capacity. Where a minor's or the parents' membership of an association impedes or jeopardizes the minor's full development, any interested person, natural or legal person or public entity may apply to the Government Procurator's Office to initiate any legal measures of protection it may deem necessary."

> 3. Minors have the right to participate in public meetings and peaceful demonstrations convened in compliance with the law.
>
> Likewise, they also have the right to promote and convene them, with the express consent of their parents, guardians or custodians."

774. The educational legislation on this question is essentially aimed at regulating the freedom of association of students at non-university educational establishments, the majority of whom are minors.

775. Thus, article 7 of the Right to Education (Organization) Act provides that students in non-university educational establishments regulated by the Act "may form associations appropriate to their age, setting up organizations in accordance with the law and with such applicable regulations as may be established." Those regulations were established by Royal Decree 1532/1986 of 11 July, which regulates students' associations. The right is extended to all pupils 12 years of age or over.

776. At international level, both the International Covenant on Civil and Political Rights (whose first Optional Protocol, to which Spain is a party, provides for the submission of communications to the Human Rights Committee by individuals), in its articles 21 and 22, and the European Convention on Human Rights, in its article 11, protect freedom of association and peaceful assembly. Consequently, as in other cases already mentioned, the mechanisms guaranteeing effective protection of those rights provided by both systems are available to children and their legal representatives.

777. Reference was made in chapter I.K to various activities conducted to disseminate the Convention, in which the right to participation has a prominent place.

778. The Ministry of Labour and Social Affairs finances programmes carried out by NGOs, the aim of which is to promote education for group participation and children's responsibility. Children must participate directly in the development of the programme, and its implementation will involve the creation of stable associations, enabling children to participate in the NGOs themselves. These programmes seek first and foremost to integrate children who find themselves in difficult social circumstances.

2. Measures adopted by the Autonomous Communities

779. The Autonomous Communities, by virtue of their powers in areas such as youth policy and protection of children and associations, have introduced legislation governing participation of children in society, and specifically their freedom of association, as well as committing the administrations to the task of stimulating and promoting associative activities among children.

780. In this context, mention may be made of article 12.3 and 4 of Andalusia's Act 1/1998 of 20 April, governing the rights and care of children; article 4 of Aragón's Act 10/1989 of 14 December, on protection of minors; the Canaries' Act 1/1997 of 7 February, providing comprehensive care for minors; articles 12 and 51 of Catalonia's Act 8/1995 of 27 July, on care and protection of children and adolescents; article 7 of Galicia's Act 3/1997 of 9 June, on the family, children and adolescents; article 20 of La Rioja's Act 4/1998 of 18 March, on minors; articles 15, 19, 23 and 90 of Madrid's Act 6/1995 of 28 March, guaranteeing the rights of children and adolescents; article 6 of Murcia's Act 3/1993 of 21 March; and article 8 of Valencia's Act 7/1994 of 16 December, on children.

781. There are many children's and youth associations in the territories of the Autonomous Communities, including some of the social organizations forming part of the Platform of Children's Organizations. These associations' objectives include the defence of children's rights, participation in

the organization of the school community, and conducting educational, play, sporting, artistic and voluntary activities.

782. In Autonomous Communities where there are no children's associations as such, it is usual for young people under 18 years of age to participate in youth associations. In some cases, adult associations also have children's sections.

3. Measures adopted by social organizations

783. See also chapters I.G and III.D.

784. Two of the social organizations comprising the Platform of Children's Organizations, in addition to promoting group and associative activities among the children with whom they work, are themselves made up of children and young people.

F. Protection of privacy (art. 16)
(CRC/C/58, para. 59)

1. Measures adopted by the State

785. Article 18 of the Spanish Constitution guarantees the right to honour, to personal and family privacy and to personal reputation, a right that has been developed in Organizational Act 1/1982. Article 20, paragraph 4, which, as was mentioned in section C, refers to limitations to freedom of thought or intellectual freedoms, lists "the right to honour, to privacy, to personal reputation and to the protection of youth and childhood" as limits to freedom of expression.

786. A series of recent events, involving the depiction of children by the media and alleged breaches of the privacy of child victims of offences, have illustrated the importance of protecting children's privacy. On this problem, reference should be made to the provisions of the Civil Protection of the Right to Honour, Privacy and Personal Reputation (Organization) Act, 1/1982 of 5 May. Under the terms of this Act, interference in the right to honour, privacy and personal reputation ceases to be unlawful when the person concerned has given his or her express consent. However, where the person whose rights may be impaired is a minor or legally incompetent, under article 3 of this Act consent may be given by such persons only "if they have attained sufficient maturity as to so permit". If that is not the case, consent must be given "in writing by the legal representative, who shall be obliged first to notify the Government Procurator's Office".

787. Article 4 of the Protection of Minors Act (1/1996), on the right to honour, privacy and personal reputation, provides that:

> "1. Minors have the right to honour, personal and family privacy and personal reputation. This right also includes inviolability of the family home and of correspondence, and secrecy of communications.
>
> 2. Any dissemination of information or depiction or use of the names of minors in the media that may involve unlawful interference in their privacy, honour or reputation, or that may be contrary to their interests, shall result in intervention by the Government Procurator's Office [...].
>
> 3. The following shall constitute unlawful interference in minors' right to honour, personal and family privacy and personal reputation: any depiction or naming of them in the media that

> may involve detriment to their honour or reputation or that may be contrary to their interests, even where the consent of the minor or of the legal representative has been given.
>
> 5. The parents or guardians and the public authorities shall respect these rights and protect them against possible attacks by third parties."

788. Article 13 provides that in all activities involving situations in which a child may be at risk or suffering "lack of protection" (desamparo), "the authorities or persons who by virtue of their profession or function are familiar with the case shall act with due caution. Such activities shall avoid any unnecessary interference in the life of the minor."

789. Act 4/1992 of 5 July, organizing and reforming the Act regulating the powers and procedures of juvenile courts, provides that "in the interests of the minor, the judge may declare that the hearings are to be held in camera. In no case shall the mass media be permitted to obtain or disseminate images of the minor, or data enabling him or her to be identified."

790. Instruction 2/1993 of 15 March, of the Government Procurator, goes so far as to urge procurators to withdraw parental authority from parents who allow the publication of, or sell to the news media, information concerning any of their children under the age of majority who have been victims of an offence. It is the Government Procurator's understanding that, in so doing, parents or guardians would be failing to comply with the principle set forth in article 154.1 of the Civil Code, which proclaims the obligation of parents to provide their children with "a full education". The Instruction adds that "Items of news involving unnecessary intrusion and which, rather than merely seeking to inform, instead affect and infringe the rights of minors, are not to be tolerated in a State governed by the rule of law."

791. The criminal law rules that seek to prevent arbitrary or unlawful intrusion into children's private lives so as to protect their honour and reputation are the same rules that protect the privacy of adults, namely, articles 197 to 199 of the Criminal Code, which punish disclosure and revelation of secrets and infringement of privacy, and the appropriation or alteration of confidential data contained in any kind of register or filing system. The only feature specific to the area of protection of children is a more severe penalty than that provided for under article 197.5 of the Criminal Code, the sentence imposed being half again as severe where the victim of the offence is a minor. In order for these offences to be prosecuted, it is a requirement that the victim must first report the offence. Where the victim is a minor, the incident must be reported by the legal representative, although the Government Procurator's Office may also submit a report. Likewise, a pardon granted by the minor's legal representative extinguishes criminal liability for these offences (art. 201 of the Criminal Code), without prejudice to the entitlement of the judge to reject the validity of the pardon granted by the legal representative in cases where the victim was a minor, upon an application by the Government Procurator's Office.

792. Act 19/1994 of 23 December, organizing the protection of witnesses and legal experts in criminal proceedings, was promulgated with the purpose of striking the necessary balance between the right to a trial with full guarantees and the safeguarding of the fundamental rights of witnesses, legal experts and their families, an issue that assumes particular importance when the victim or witness is a minor. It establishes a system that entrusts the court with responsibility for carrying out a rational assessment of the risk, and with the power to apply the necessary measures to protect the various legal interests.

793. Although this Act makes no explicit reference to the possibility that the individual protected may be a minor, these measures are also applicable to minors. They include measures intended to safeguard the identity of witnesses: exclusion from the records of evidence that may enable them to be identified,

and a ban on photographing them or depicting them by any other means. However, the primary aim of this regulation is, not the preservation of privacy - which is protected by other means -but the avoidance of possible reprisals.

2. Measures adopted by the Autonomous Communities

794. In addition to reaffirming the rights set forth in national legislation, the legislation of the Autonomous Communities concerning children has dealt with some areas relating to respect for the privacy of children, especially where they are protected by the Administration. The right to privacy must be ensured when handling such cases; those involved are required to respect the confidential nature of files, and any breach of the secrecy of the proceedings is regarded as a very serious offence.

795. This legislation also regulates intervention by the Administration itself, which is required to bring a prosecution when the rights in question are violated by the mass media.

796. In this context mention may be made of article 6 of Andalusia's Act 1/1998 of 20 April, governing the rights and care of children; article 34 of Aragón's Act 10/1989 of 14 December, on protection of minors; articles 6.2(k) and 13 of Asturias' Act 1/1995 of 27 January, on protection of minors; articles 9 and 36 of Catalonia's Act 8/1995 of 27 July, on care and protection of children and adolescents; article 40 of Extremadura's Act 4/1994 of 10 November, on protection and care of minors; article 8(i) of Galicia's Act 3/1997 of 9 June, on the family, children and adolescents; article 15 of La Rioja's Act 4/1998 of 18 March, on minors; articles 35, 49 and 95 of Madrid's Act 6/1995 of 2 August, guaranteeing the rights of children and adolescents; and articles 5, 8 and 21 of Murcia's Act 3/1995 of 21 March, on children.

797. Chapter I.H refers to the resources and opportunities available to children for the defence of their right to privacy.

G. Access to appropriate information (art. 17)
(CRC/C/58, para. 60)

1. Measures adopted by the State

798. See also chapter VII.C of the report.

799. The right to information is protected in the aforementioned article 20 of the Spanish Constitution, on freedom of expression, being considered as encompassed by the general concept of freedom of expression. Paragraph 1 (d) of that article recognizes the right of all citizens "to freely communicate or receive accurate information by any means of dissemination whatsoever...".

800. Furthermore, it is clear that the right to receive accurate information and the right of individuals to honour are closely related, since the latter is the legal interest most likely to suffer as a result of inaccurate information. In this regard, the relevance to children is important: it is not simply a matter of confirming the accuracy of the information received; it is also essential that the information should not have the potential to harm children in any way, as has already been pointed out in section F.

801. Article 5 of the Protection of Minors Act (1/1996) provides that:

> "1. Minors have the right to seek, receive and use information appropriate to their development.

> 2. The parents or guardians and the public authorities shall seek to ensure that the information received by minors is accurate and diversified and complies with constitutional principles.
>
> 3. The Public Administrations shall promote the production and dissemination of information and other materials destined for minors that comply with these criteria, and shall also facilitate access by minors to information services, documentation, libraries and other cultural services.
>
> In particular, they shall seek to ensure that the media, in their messages addressed to minors, promote the values of equality, solidarity and respect for others, avoid depictions of violence, of exploitation in interpersonal relationships, and of degrading or sexist treatment.
>
> 4. To guarantee that the advertising or messages aimed at minors or contained in the programmes directed at them do not harm them morally or physically, they may be regulated by special rules.
>
> 5. Without prejudice to other persons so entitled, it is in any event incumbent on the Government Procurator's Office and the public administrations responsible for protecting minors to ensure that unlawful advertising is discontinued and amended."

802. As regards international cooperation for the dissemination of children's books and materials necessary for children's social and cultural development, with particular regard to the linguistic needs of children belonging to minority groups, mention should be made of the UNESCO Convention Against Discrimination in Education, to which Spain has been a party since 20 August 1969.

803. Under the terms of that Convention, States parties undertake to repeal any legislation or administrative practice that discriminates in the sphere of education and to accept measures, including legislative provisions, to ensure that there shall be no discrimination on any grounds with regard to the admission of students to educational establishments; however, the Convention is also clear with regard to the requirement "to give foreign nationals resident within their territory the same access to education as that given to their own nationals" (art. 3 (e)). Furthermore, the Convention proclaims that States parties agree that education must promote tolerance and friendship among all racial and religious groups, and that national minorities must have the right to carry on their own educational activities, such as maintaining schools and teaching or using their own languages, provided that right does not prevent minorities from understanding the culture and language of the community as a whole (art. 5.1 (a) and (c)). The Convention does not permit States parties to make any form of reservation to any of its articles (art. 9).

804. Article 3 of the ILO Paid Educational Leave Convention (No. 140), of 24 June 1974, which has been in force in Spain since 18 September 1979, declares that the States parties' policies in this area must contribute to the human, social and cultural promotion of employees and favour continuing education appropriate to the requirements of contemporary life. Article 8 provides that paid educational leave shall not be denied to employees for reasons of race, colour, sex, religion, political opinion or national or social origin.

805. In the sphere of the Council of Europe, the European Agreement on Travel by Young Persons on Collective Passports between the Member Countries of the Council of Europe, concluded in Paris on 16 December 1961, which entered into force for Spain on 18 June 1982, reflects member States' desire to facilitate travel by young people among their respective countries.

806. As for the protection of children from information injurious to their well-being, mention has already been made of article 5.3 of Act 1/1996, referring to media messages.

807. Article 17 of Act 25/1994 of 12 July, which incorporates Directive 89/552/EEC, on the exercise of television broadcasting activities, into the Spanish legal order, provides, as already indicated in chapter III.A, that:

> "1. Television broadcasts shall not include programmes or scenes or messages of any kind that may seriously harm the physical, mental or moral development of minors, or programmes that encourage hatred, contempt or discrimination on grounds of birth, race, sex, religion, nationality, opinion or any other personal or social circumstance.
>
> 2. The broadcasting of programmes likely to harm the physical, mental or moral development of minors and, in any event, of programmes containing pornographic or gratuitously violent scenes, shall take place only between the hours of 10 p.m. and 6 a.m. and shall contain visible and audible warnings as to their content."

808. To protect children from advertising, article 16 provides that:

> "Television advertising shall not contain images or messages that may cause minors moral or physical harm. Accordingly, it must respect the following principles:
>
> (a) It must not directly encourage minors to purchase a product or service by exploiting their inexperience or credulity, or to persuade their parents or guardians, or the parents or guardians of third parties, to purchase such products or services.
>
> (b) In no circumstances shall it exploit children's especial confidence in their parents, teachers or other persons.
>
> (c) It shall not, without justifiable reason, depict children in dangerous situations."

809. Article 11 provides that:

> "The advertising of alcoholic beverages must comply with the relevant provisions of General Advertising Act 34/1988 of 11 November, and with the following principles:
>
> (a) It shall not be targeted specifically on minors, or, in particular, depict minors consuming such beverages.
>
> (b) It shall not associate the consumption of alcohol with an improvement in physical performance or the driving of vehicles, or give the impression that the consumption of alcohol contributes to social or sexual success, or suggest that alcoholic beverages have therapeutic properties or a stimulant or sedative effect, or that they are a means of resolving conflicts.
>
> (c) It shall not encourage immoderate consumption of alcoholic beverages or present a negative image of abstinence or sobriety, or emphasize their high alcohol content as a positive quality."

810. Article 186 of the Criminal Code punishes anyone who, through a direct relationship with minors, distributes, sells or exhibits pornographic material among them.

811. The draft organizational law amending Title VIII of Book II of the Criminal Code (which concerns offences against sexual freedom), which was before Congress as this report was being prepared, retains the classification of this offence unaltered, but increases the penalty.

812. Article 1 of Act 1/1982 of 24 February, regulating special premises for the viewing of films and the Spanish film archive and setting dubbing rates, provides that:

> "Films of a pornographic nature or that glorify violence shall be rated with an X certificate by resolution of the Minister of Culture, on a report by the Film Classification Board, and shall be shown exclusively in special premises which shall be designated as X-rated cinemas. No other class of films may be shown in such premises, and in no circumstances shall persons under 18 years of age be admitted to them."

2. Measures adopted by the Autonomous Communities

813. The Autonomous Communities have dealt in great detail with the relationship of children to the media and measures to protect them from media messages that may be injurious to them.

814. The scope of the protection regulated by the Autonomous Communities covers various areas:

- protection against pornographic and violent publications and videos and those advocating crime;
- protection concerning the contents of radio and television programmes, regulated in terms similar to those of the aforementioned Act 25/1994 of 12 July, incorporating Directive 89/552/EEC, into the Spanish legal order;
- protection against the advertising of harmful products (alcohol, tobacco);
- protection limiting access by children to shows and premises;
- measures taken by the Autonomous Administration to foster cultural and artistic events for children, as well as access by children to information services, libraries and other public cultural services.

815. Mention may be made of article 7 of Andalusia's Act 1/1998 of 20 April, governing the rights and care of children; articles 26, 34-36 and 38 of the Canaries' Act 1/1997, providing comprehensive care for minors; article 4 of Castile-La Mancha's Act 2/1995 of 2 March, against the sale and advertising of alcoholic drinks to minors; articles 11 and 33-37 of Catalonia's Act 8/1995 of 27 July, on care and protection of children and adolescents; article 8(i) and (j) of Galicia's Act 3/1997 of 9 June, on the family, children and adolescents; articles 16, 17.1, 31-33, 35, 36, 38 and 40 of Madrid's Act 6/1995 of 2 August, guaranteeing the rights of children and adolescents; and articles 27 to 29 of La Rioja's Act 4/1998 of 18 March, on minors.

3. Measures adopted by social organizations

816. See chapter I.K.

H. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37 (a)) (CRC/C/58, para. 61)

1. Measures adopted by the State

817. Information on ill-treatment and exploitation is contained in chapters V.I and VIII.C.3 respectively.

818. Articles 173 to 177 of the Criminal Code punish degrading treatment and torture, thereby protecting the moral integrity of individuals against any type of attack.

819. In the new Criminal Code moral integrity is characterized independently of other, more traditional interests such as freedom, honour and physical integrity, under which it was previously considered to be subsumed.

820. The offence of degrading treatment (art. 173), consisting of injury to the moral integrity of a person, is to be regarded as the generic form of the offence, whereas torture, that is, injury to the moral integrity of a person performed by a public official with the intention of obtaining a confession or punishing the victim for some action committed, is its specific form.

821. The individual is cited as the victim of the generic offence of degrading treatment, but no measures exist explicitly protecting children against degrading treatment, whether committed by an individual (art. 173) or by a public official in abuse of his authority (art. 175). Likewise, the individual is cited as the victim of the specific offence of torture, which may be committed only by a public official in abuse of his authority (art. 174.1). Article 174.2 extends the penalty provided for in article 174.1 to the authorities or officials of children's and adolescents' prison or corrective establishments guilty of such conduct.

822. Another provision protecting children's moral integrity is article 185 of the Criminal Code, which imposes a fine of three to ten months' minimum wage on anyone who performs or causes others to perform obscene acts before children.

823. Royal Decree 732/1995 of 5 May, establishing the rights and obligations of pupils and the internal rules governing social behaviour in schools, is the statutory framework regulating relations in such establishments involving student participation. Respect, tolerance, and the adoption of positive and non-violent measures in response to breaches of discipline are aspects of everyday coexistence in schools and serve to raise awareness of and prevent conduct incompatible with those rights. Under the terms of the Royal Decree, pupils have the right to respect for their physical and moral integrity and their personal dignity, and may in no circumstances be subjected to maltreatment, degrading treatment or physical or psychological punishment.

824. Other protective provisions are article 7 of the International Covenant on Civil and Political Rights, through the Human Rights Committee; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and article 3 of the European Convention on Human Rights, through the European Commission and Court of Human Rights.

2. Measures adopted by the Autonomous Communities

825. See the legislation referred to in chapter V.J, on abuse and negligence, and the sections relating to paragraphs 158-159 of the guidelines, on sexual exploitation and sexual abuse.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

A. Parental guidance (art. 5) and B. Parental responsibilities (art. 18) (paras. 1 and 2; paras. 62-67 of the general guidelines (CRC/C/58))

1. Measures adopted by the State

826. On family structures within society, see the tables in annex A.

827. With regard to enacted measures to support and protect the family, irrespective of the type of family structure, article 39 of the Spanish Constitution provides, as already indicated in paragraph 148 of Spain's initial report, that "the public authorities shall ensure the social, economic and legal protection of the family", including in that protection all forms that the family may take.

828. Similarly, the protection of the family by society and the State, equality of rights and responsibilities of the parents and protection of the children in the event of dissolution of the marriage are recognized in Spain's instrument of ratification of the International Covenant on Civil and Political Rights, adopted in New York on 16 December 1966 (art. 23).

829. As regards the question of parental responsibility, in the area of criminal law rules, article 226.1, first paragraph, of the 1995 Criminal Code punishes anyone who fails to perform the statutory duties of assistance inherent in parental authority, guardianship, custody or family fostering, as well as anyone who fails to perform the statutory duties of assistance to their needy descendants, a requirement that may, for instance, apply to the duty of assistance incumbent on grandparents vis-à-vis their grandchildren.

830. In the context of civil law, and having regard to the information contained in paragraphs 149 to 159 of Spain's initial report, on the regulation of relations between parents and children, the following should also be mentioned:

(a) Under article 9.1 of the Protection of Minors Act (1/1996), the minor has the right to a hearing within the family environment with regard to all decisions that affect his or her personal, family or social circumstances;

(b) The Fourth Final Provision of the same Act amended article 158 of the Civil Code. The result is that the court authority, without any need for submission of a request to that effect (in contrast to the position under the previous legislation, whereby a prior request by the child, a relation or the Government Procurator's Office was necessary), may adopt - in any civil, criminal or non-contentious proceedings - the following measures:

> "1. Any measures it may deem appropriate to ensure maintenance and provide for the future needs of the child, in the event of the parents failing to fulfil that duty;
>
> 2. Appropriate measures to avoid disruptive effects on the children in the event of a change of guardianship;
>
> 3. Generally, any measures it may deem appropriate to avert danger to the minor or prevent injury to him."

unanimously of the view that this is a power correlating to the duty to educate, and that it must in any event be exercised within certain limits, beyond which the conduct of the parents would be unlawful;

(d) Appraisal and assessment of this power of administering punishment is subject to judicial control. Abuse of the power may give rise, in addition to criminal sanctions (arts. 153 and 147 of the Criminal Code), to deprivation of parental authority under article 170 of the Civil Code. Likewise, it may constitute a relevant factor in assessing the minor's state of desamparo ("lack of protection"), resulting in the assumption of guardianship by the competent public agencies and the ordering of protective measures, with interim suspension of parental authority;

(e) Article 12 of Act 1/1996 provides that the protection of minors by the public authorities shall take the form of prevention (and, where applicable, rectification) of risk situations, with appropriate services established for that purpose. It further provides that the public authorities must seek to ensure that the parents, guardians or custodians perform their responsibilities in an adequate manner, by providing accessible services in all areas affecting the development of the child, with a view to securing that end.

831. Constitutional Court Judgement 67/1998 of 18 March 1998, to which reference has been made in other paragraphs of this report, delivered in Remedy of Amparo 109/95, in a case of non-payment of maintenance, recognizes the parental responsibilities in the upbringing and development of the child and the right of the child - including children born out of wedlock - to be assisted by the parents, thus proclaiming the fundamental right to non-discrimination on grounds of birth. Among its legal arguments, the Court cites the Convention on the Rights of the Child, reflecting the additional protection that the Convention accords to children (Legal Ground No. 5).

832. In 1997 the Ministry of Labour and Social Affairs set up a care programme for disadvantaged families and families in situations of social risk, to be conducted in collaboration with the Autonomous Communities and Local Corporations, through agreements whereby the Autonomous Community and the Local Corporation responsible for the project jointly finance at least 50 per cent of its total cost.

833. This programme, which supplements the activities already being conducted by the Community's social services, is intended to provide care for families in less privileged areas who find themselves in especially difficult social circumstances and who require comprehensive, individually tailored social interventions, including both socio-educational measures and social and employment integration measures, to help them overcome their social difficulties and to prevent any risk of social exclusion.

834. The Ministry of Labour and Social Affairs earmarked 130 million pesetas for these activities in 1997. The 15 Autonomous Communities and the 108 Local Corporations participating together contributed 265,382,283 pesetas, benefiting an estimated 4,000 families through 30 programmes. The Ministry allocation for 1998 is 200 million pesetas.

835. Chapter VI.C refers to social security benefits and criteria concerning protection of children and their families.

836. Chapter V.C provides information on services for children of between 0 and 3 years of age.

2. Measures adopted by the Autonomous Communities

837. Identification of situations of risk and desamparo ("lack of protection"), and the consequential measures taken by the Autonomous Communities to protect and support families and children, fall

within the framework of the national civil legislation referred to above and of the legislation on children promulgated by the Autonomous Communities themselves.

838. Among the laws establishing the responsibilities of parents and measures to support families, mention may be made of article 3.4 of Andalusia's Act 1/1998 of 20 April, governing the rights and care of children; article 11 of Aragón's Act 10/1989 of 14 December, on protection of minors; article 8 of Asturias' Act 1/1995 of 27 January, on protection of minors; article 45 of the Balearics' draft statute of minors; articles 4.2, 16 and 21 of the Canaries' Act 1/1997 of 7 February, providing comprehensive care for minors; articles 11 and 48 of Castile-La Mancha's Act 5/1995 of 23 March, on solidarity, and chapter III of its Decree 143/90 of 18 November, on procedures for the protection of minors; article 10 of Castile and León's Act 18/1988 of 23 December concerning social action and social services, and article 11 of its Decree 57/1988 of 7 April, enacting rules on the protection of minors; articles 17 and 18 of Catalonia's Act 8/1995 of 27 July, on care and protection of children and adolescents, and articles 12 and 20 of its Act 11/1985 of 13 June, on protection of minors; title III of Galicia's Act 3/1997 of 9 June, on the family, children and adolescents; articles 3 and 8 of Madrid's Act 6/1995 of 28 March, guaranteeing the rights of children and adolescents; and articles 4, 5, 12 and 18 of Murcia's Act 3/1995 of 21 March, on children.

839. As regards programmes and activities to support, counsel and protect families, section B.3 of the Introduction to the report referred to the network of equipment, services and basic benefits available for the care and protection of children and families comprising the Public System of Social Services, at both primary or community and specialized levels.

840. Within this legislative and institutional framework of social policies, and under the Family Programme, the community social services of the Autonomous Communities and municipalities adopt positive measures, including:

(a) economic benefits, such as assistance for family integration and emergency aid;

(b) minimum integration incomes additional to economic aid, enabling families to comply with obligations such as the obligation to provide the children in their care with effective schooling;

(c) assistance with housing;

(d) tax benefits;

(e) educational programmes for parents, to provide training in parenting skills and avoidance of ill-treatment. Some Departments of Education of the Autonomous Communities grant all school courses aids to finance programmes of this type organized by associations of parents of pupils in State schools and schools operated under agreements at non-university level;

(f) home help programmes;

(g) preventive programmes to cover children's basic needs and improve their family environment, so as to guarantee their right to remain in the home in circumstances conducive to their full development;

(h) the establishment of socio-educational services for children aged 0-3, to compensate for inequalities among the most socially disadvantaged groups and facilitate the parents' or guardians' integration into the labour force;

(i) media campaigns to raise social awareness of attitudes and behaviour conducive to social support for families;

(j) campaigns to promote social awareness of attitudes that foster joint responsibility of men and women for family responsibilities and housework and non-sexist family education;

(k) information campaigns by the administration, to increase families' awareness of the existence of the "large family" category and of the price benefits it offers; issuance of "large family" cards to families in that category;

(l) telephone help lines offering advice on social resources for the family;

(m) measures to facilitate access by single parents with family responsibilities to the technical and economic assistance available;

(n) support for the integration of immigrants and ethnic minorities, their family reunification and temporary accommodation;

(o) family counselling, provided by the municipalities' and Autonomous Communities' child guidance services;

(p) coexistence and social rehabilitation programmes, to prevent and resolve problems resulting from the break-up of families, remedy the situation of the needy, and facilitate the reintegration of groups at risk of marginalization;

(q) guidance and mediation services for families with problems;

(r) programmes to deal with cases of child abuse;

(s) vacations for single or separated mothers;

(t) research into the social situation of families in the Autonomous Communities.

3. Measures adopted by social organizations

841. Some of the organizations comprising the Platform of Children's Organizations include among their activities and services provision of foster homes for children who lack an adequate family environment, in Spain and also in some countries of Latin America.

842. These organizations offering residential care services work concertedly both with children and with families, offering guidance to parents on relations with their children. After the child has been reintegrated in the family, his or her social and family situation continues to be monitored for some time.

843. Some of these organizations frequently organize classes for parents, the aim being to prepare them for the successful integration of the child into a normal social and family environment.

844. As already indicated in chapter III.D, one of the Platform organizations has set up a nationwide free telephone help line, "Nuestro Teléfono", which, in addition to offering advice to children, also assists adults wishing to report or seek advice about a problem concerning the children in their charge.

845. The "Stand Up For Your Rights" educational programme referred to in the replies to paragraph 22 of the general guidelines offers material for distribution to parents. This material refers to the rights of the child and to problems of communication between children and adults.

846. Some organizations stress the need to set up government programmes to educate parents in the rights of the child and provide them with guidance in educational matters, particularly in their relations with their teenage children.

B. Separation from parents (art. 9)
(CRC/C/58, paras. 68-72)

1. Measures adopted by the State

(a) In the Legal Protection of Minors (Organization) Act, 1/1996 of 15 January

847. With a view to avoiding the separation of children from their parents, the Protection of Minors Act (1/1996) expressly included among the protective functions of the public administrations the task of developing a preventive social policy with regard to family situations that might lead to the separation of the child from the parents in his or her best interests.

848. Specifically, in any type of so-called risk situation liable to harm the child's personal or social development, article 17 of the Act establishes that "the actions of the public authorities must in every case guarantee the rights available to the minor and aim to reduce the risk factors and social difficulties that may affect his or her personal and social situation and to promote the factors intended to protect the minor and his or her family". The Act obliges the public authorities to monitor the child's progress in the family.

849. Furthermore, the explanatory statement clarifies the meaning of the expression "risk situation" and the distinction between it and situations of desamparo.

> "In risk situations, characterized by the existence of harm to the minor that does not attain sufficient gravity to justify his or her separation from the nuclear family, the intervention referred to is confined to attempting to eliminate, within the institution of the family, the risk factors; however, in situations of desamparo, where the seriousness of the acts makes the removal of the minor from the family advisable, such removal takes the form of assumption by the Public Authority of guardianship of the minor and consequent suspension of parental authority or ordinary guardianship."

850. Separation of the child from the parents as a consequence of the decision taken by the competent public agency may result from any of the following causes:

(a) A declaration, by the public agency, of a situation of lack of protection (desamparo) of the child. When the public agency responsible for the protection of minors in the autonomous territory in question ascertains that a child is in a situation of desamparo (because of failure to perform, inability to exercise, or inadequate exercise of, the duties of protection established by law for the custody of minors, as a result of which they are deprived of the necessary moral or material assistance), it shall assume, by operation of law, guardianship of the minor (arts. 172.1 and 222.4 of the Civil Code and art. 18 of the Protection of Minors Act, 1/1996). The public agency, in addition to taking the protection measures necessary for the custody of the minor, is obliged to inform the Government Procurator's Office of its actions, and to notify in due legal form the parents, guardians or custodians. In this case, it shall do so within 48 hours. The Act provides that, wherever possible, they must be informed, at the time of the notification, in person, clearly and comprehensibly, of the reasons for the assumption of guardianship by the public agency and of the effects thereof. Guardianship by the public agency entails suspension of parental authority or of ordinary guardianship; however, acts relating to the minor's patrimony performed by the parents or guardians on his or her behalf and for his or her benefit shall be considered valid. Supervision of this administrative guardianship is the responsibility of the Government Procurator's Office, which must verify the minor's situation at least once every six months. Where appropriate, it may request the judicial authority to take any protection measures it may deem necessary. To ensure better performance of this task, the legislature has made it an obligation of the competent public authorities immediately to inform the procurator of any new income accruing to minors, and of any significant change in their circumstances. The parents, guardians or custodians may, without the need for any prior administrative application, appeal to the civil courts against the decisions declaring a state of desamparo and ordering the assumption of authority by the public agency.

(b) A court decision ordering the deprivation of parental authority. In application of article 170 of the Civil Code, the father or mother may be deprived totally or partially of parental authority by a decision based on their failure to perform the duties implicit therein or pronounced in criminal or matrimonial proceedings. Even where they do not exercise parental authority, the parents have the right to maintain relations with their children below the age of majority, except those adopted by others or as otherwise provided in a court decision. Similarly, a minor may not, without just cause, be prevented from continuing to maintain personal relations with other relatives and members of the household.

(c) A court decision ordering annulment, separation or divorce. In cases where annulment, separation or divorce are decreed by the court, the parents are not relieved of their obligations vis-à-vis the children, without prejudice to the possibility that, in the children's interests, it may be agreed that parental authority is to be exercised, totally or partially, by one of the spouses or that one or the other shall be given custody, with every care taken not to separate siblings. The court decision ordering separation, annulment or divorce may also order deprivation of parental authority where due cause emerges in the proceedings. Such deprivation may be total or partial, and the court may, for the benefit and in the interests of the children, order the restoration of parental authority when the cause for its removal has ceased.

(b) In criminal matters

851. Various provisions of criminal legislation are designed to ensure that the parents' duties and rights of custody of their children below the age of majority are not undermined. These provisions also protect the right of the child not to be separated from his or her parents:

(a) Article 223 of the Criminal Code punishes anyone who, having custody of the minor, and without justification, fails to present him or her to the parents or guardians when required to do so;

(b) Article 224 of the Criminal Code punishes the act of inducing a minor to leave the family home or the place where he or she resides with the consent of the parents, guardians or custodians;

(c) Article 231 punishes anyone who, having responsibility for the upbringing or education of a minor, hands him or her over to a third party or to a public establishment without the consent of the person who entrusted the minor to him, or, in the absence of such person, of the authority.

852. The criminal legislation also endeavours to protect children from parents, guardians or custodians who, in breach of a decision taken by a judge or court, forcibly remove them from the

establishment, family, person or guardianship institution to which they have been entrusted, or who fail to return them when obliged to do so.

(c) In proceedings

853. With regard to participation in separation, annulment and divorce proceedings between the parents, hearings of children who are below the age of majority or incapacitated are referred to the relevant court proceedings, in both personal and patrimonial matters.

854. Provision is made for children to be heard when the judge orders the necessary measures for the care and education of the children, which will always be decided in their best interests. As already stated in chapters II and IV.C of this report, such provision is automatic for children 12 years of age or over, and children below that age will be heard if they are old enough to form an opinion.

855. Provision is also made for the children to be heard when the judge has to decide which of the two separated parents is to have custody of them.

856. The Sixth Additional Provision of Act 30/1981 of 7 July, referred to in Spain's initial report and which remains in force, amending the regime regulating marriage in the Civil Code and determining the procedure in cases of separation and divorce proceedings, establishes in its section 6 that "if there are children who are below the age of majority or incapacitated, the judge shall grant the Government Procurator's Office a five-day hearing on the agreement concerning the children and, where appropriate, shall also hear the latter. When the report has been issued by the Government Procurator's Office or when the time allowed for issuance of such report has elapsed, the judge shall, if he considers that the agreement does not sufficiently protect the interests of the children, grant the parties leave to submit to him, within a period of five days that may not be further extended, a new text together with the evidence on which they intend to rely for its approval. When he has examined the submissions, the judge may, within a period not exceeding 10 days, decide to request such other submissions as he may deem necessary."

857. The Government Procurator's Office is also entrusted with a protective role in these proceedings, as the Eighth Additional Provision of Act 30/1981 of 30 July provides for its intervention where one of the spouses or children is a minor, incapacitated or absent.

858. In every case, as was indicated in the section relating to paragraph 55 of the guidelines, article 9 of the Protection of Minors Act (1/1996) establishes as a general condition the right of minors to a hearing in any proceedings in which they are directly involved and which may lead to a decision affecting their personal, family or social interests.

(d) The "right to visit"

859. As for legislative measures provided to ensure respect for the right of the child separated from one or both parents to maintain personal relations and direct contact with both on a regular basis, except where this would be contrary to the child's best interests, provision exists in the Spanish legal order for a "right to visit".

860. Among the most important effects of annulment, separation and divorce orders is the need to determine which of the spouses is to have custody of unemancipated children below the age of majority and subject to parental authority, and to grant a right of access to the parent who is deprived of the children's company.

861. In this connection, article 94 of the Civil Code provides as follows:

> "The parent not accompanied by the children below the age of majority or incapacitated children shall enjoy the right to visit them, communicate with them and keep company with them. The judge shall determine the time, manner and place in which this right is to be exercised, and may limit or suspend it in the event of serious circumstances arising that make such a course advisable or in the event of a serious or repeated failure to comply with the duties imposed by the court decision."

862. As regards participation by children in the realization of this right, article 92.2 of the Civil Code provides that, before taking any measure concerning their care and education, the judge must accord them a hearing if they are old enough to form an opinion, and in any case if they are 12 years of age or over.

863. In every case, and pursuant to the same statutory provision, the judge must always, when ordering measures of this type, take account of the best interests of the children.

864. The public agency that assumes the guardianship of a minor in a situation of desamparo has a statutory obligation to inform the parents, guardians or custodians of the situation of minors in its custody, provided that no court decision has prohibited this (art. 22 of the Protection of Minors Act, 1/1996).

(e) Children of women in prison

865. In the case of minors who are the children of women in prison, Organizational Act 13/1995 of 18 December introduced a significant amendment to the General Prisons (Organization) Act (1/1979). This amendment affects two areas of relevance: the possibility for children to remain with their mothers in prison, and the entitlement of imprisoned mothers to a period of maternity rest.

866. Before this reform, the Act had allowed for the possibility for children to remain in the prison with their mothers until attaining the age of compulsory schooling (6 years). The Act has been amended by retaining this possibility only until the child is three years of age. The explanatory statement justifies this reform on the basis of the following considerations:

> "[...] At the time, the legislature made a considerable effort to facilitate the lives of children in prisons. However, the option for the child to remain in the prison until the age of six may lead to serious impairment of his or her emotional or psychological development, given the growing awareness that the mother is deprived of her liberty, and the fact that that awareness will significantly affect the early formation of his or her personality.
>
> What is undoubtedly needed is a balance, rather than a confrontation, between the rights of the mother and of the child; but it is no less certain that, ultimately, it is the inherent rights of the weaker party that must prevail, over which, accordingly, the legal order must exercise special protection. Furthermore, changes in the organization of the education system mean that children can now attend school from the age of three, and the social services responsible for child care offer possibilities for living arrangements more propitious to their development."

867. In addition to reducing the age until which the child may remain with the mother, the Act provides for the establishment of child care premises in prisons where children are living with their mothers. It also provides for the establishment of a specific regime of visits, with its own regulations, for children below 10 years of age who do not live with their mothers in the prison, specifying that these

visits shall take place without any form of restriction with regard to frequency or privacy, and that their timing and duration shall be determined by the internal organization of the prison.

868. Lastly, it includes a specific guideline calling on the prison administration to promote the necessary agreements with public and private agencies with a view to providing better institutional and social support for female inmates with children and improving the development of the mother-child relationship, having regard to the special circumstances arising from the fact that the mother is serving a prison sentence.

869. The regulations provide for a 16-week period of rest for imprisoned mothers, during which they shall be exempted from prison duties - the same period as is accorded by the employment legislation and provided for in the labour contracts of working women.

870. With regard to alien minors, article 108 of Royal Decree 155/1996 of 2 February, approving the Implementing Regulations of the Rights and Freedoms of Aliens in Spain (Organization) Act, 7/1985 of 1 July, establishes, in connection with centres for the internment of aliens, that:

> "... foreign minors may not be placed in such centres, but must instead be brought before the services responsible for the protection of minors, save where, upon a favourable report by the Government Procurator's Office, their parents or guardians detained in the same centre express their desire to remain together and appropriate accommodation is available to guarantee the family's unity and privacy."

871. Furthermore, in 1995 Spain withdrew the reservations it had formulated on 29 April 1987, when ratifying the tenth Hague Convention concerning the powers of authorities and the applicable law in respect of the protection of minors, concluded at The Hague on 5 October 1961, regarding articles 13 and 15 of that Convention. The effects of the following reservations ceased on 19 August 1995:

(a) Reservation to article 13: "The Spanish State limits the application of the following Convention to minors who hold the nationality of the Contracting State.";

(b) Reservation to article 15: "The Spanish State reserves the powers of its authorities called upon to settle applications for the annulment, dissolution or attenuation of the marital link between the father and the mother of a minor, with a view to ordering measures for the protection of the latter's person or goods."

(f) The International Social Service

872. The International Social Service is an organization created in 1924, the purpose of which is to assist in resolving the social and socio-legal problems confronting individuals and families as a result of international migrations and displacements.

873. The affiliated office of the International Social Service in Spain forms part of the structure and routine operations of the Directorate-General of Social Action, Minors and the Family, attached to the Ministry of Labour and Social Affairs.

874. Three out of every four problems dealt with by the International Social Service in Spain concern children, and arise from changes in family circumstances (separation and divorce, migration, etc.):

(a) rights of custody and access, payment of maintenance;

(b) family reunification, repatriation, reception in families;

(c) tracing families of origin (children not of the marriage and adoptive children);

(d) abduction of minors and support for the restoration of their right to maintain relations with both parents even though they live separately;

(e) verification of consent and investigation of families in international adoption proceedings already under way;

(f) unaccompanied minors arriving in Spain from abroad without their family or legal representative;

(g) problems relating to imprisonment and concerning trafficking in and consumption of drugs by the parents.

875. Interventions by the affiliated office of the International Social Service in Spain are based on a reciprocal exchange of professional services, provided through coordination of each country's international and national networks, through requests for intervention made by a section, affiliated office or correspondent office of another country's International Social Service or by the Spanish social services.

876. In Spain, all these problems are dealt with through collaboration with the network of social services, especially of the autonomous and local administrations.

2. Measures adopted by the Autonomous Communities

877. With regard to judicial and administrative procedures, the administrations of the Autonomous Communities apply the protection measures in accordance with the civil legislation of the State, their own legislation on children and the rules for care under the Children's Programmes, cited in chapter I.G.

878. On the basis of the State legislation, the Autonomous Communities have developed the procedure for declaration of a situation of risk or desamparo in their own laws and regulations, already cited in other paragraphs of this report.

879. In its declarations of risk or desamparo and in its protective measures, implemented by community social service workers who identify cases through technical family and child care teams, the autonomous administration has to adhere to the principle of subsidiarity as regards parental functions. Thus, a guiding principle of administrative action is integration, or, where applicable, reintegration of children in their family environment, unless such a course is not in their best interests. Whenever possible, efforts will be made to take measures that do not entail separation of the child from the home and family. If a temporary separation is necessary, this must not present an obstacle to the natural family's rights of visit and communication, provided that the child's best interests are not adversely affected.

880. The regulations governing administrative procedures for protection that entail separation of the child from his family include an express requirement for all the parties affected to be informed and to be involved at various stages of the process.

881. Some Autonomous Communities have established, on an experimental basis, other professional resources known as child care delegates, closely associated with the child and youth care teams, who offer peripatetic services, coordinating the process of reintegrating and socializing children.

3. Measures adopted by social organizations

882. The social organizations managing and operating child protection services abide by the criteria and standards referred to above and those mentioned in section G of this chapter.

883. The social organizations working with children often stress the need for judges and technical teams attached to the courts to take fuller account of the principles of the Convention in their decisions, so as to ensure respect for children's views and to avoid situations in which children are unwilling to accept court decisions because they recognize that they conflict with their own rights and interests.

C. Family reunification (art. 10)

(CRC/C/58, paras. 73-77)

1. Measures adopted by the State

884. The current treatment of family reunification under the Spanish law of aliens is a recent innovation. The regulations are basically contained in Royal Decree 155/1996 of 2 February, approving the Implementing Regulations of the Rights and Freedoms of Aliens in Spain (Organization) Act, 7/1985 of 1 July, and in Royal Decree 766/1992 of 28 June, amended in 1995, which sets forth the regime of nationals of member States of the European Union and other States parties to the Agreement on the European Economic Area and their family members.

885. These regulations require a distinction to be drawn between different situations, depending on the nationality of the child and of the parents. Where the child is Spanish, regardless of the nationality of the parents, the right conferred on Spaniards in article 19 of the Spanish Constitution comes into play: "Likewise, they have the right to freely enter and leave Spain subject to the terms to be laid down by the law. This right may not be restricted for political or ideological reasons." Entry into and departure from the territory of Spain is regarded as a right of all Spaniards, including minors. Account must also be taken of the assistance provided for in Order No. 9 of January 1991 establishing programmes of action in favour of emigrants, inasmuch as children may also benefit from them.

886. The situation is different if the reunifier is a child and the family is to be reunified in Spanish territory. In this case there is a requirement that the ascendant relatives live at the expense of the child. This requirement presupposes, for example, that the privileged regime of family reunification does not cover a situation such as separation or divorce of the parents, in which custody of the child is awarded to the foreign parent not resident in Spain and it is intended that the Spanish minor should not take up residence outside Spanish territory. However, a hierarchically lower rule provides for a waiver of the visa requirement for "foreigners who can prove that they are direct ascendant relatives of a Spanish minor resident in Spain living at their expense" (art. 2(h) of the Order of 11 April 1996 of the Ministry of Justice and the Interior, regulating visa exemptions).

887. If the child is a foreigner, the regime of family reunification depends on the nationality of the parents and on whether the child, the father or the mother is the reunifier. When the foreign minor is the descendant of Spaniards or of nationals of other member States of the European Union and other member countries of the European Economic Area, or when he or she is the descendant of the spouse of persons of those nationalities - provided they have not legally separated - he or she will have the right to enter, leave and freely move in and remain in Spanish territory, upon completion of certain formalities.

If the child does not have the nationality of one of the member States of the European Union or of other States parties to the Agreement on the European Economic Area, he will need, in addition to a passport or identity card, an appropriate visa, unless his or her stay in Spain, regardless of its purpose, is for less than three months.

888. Children of Spaniards who do not have the nationality of one of the member States of the European Union and other member countries of the European Economic Area will be issued with a residence permit valid for five years. Children of nationals of other member States of the European Union or other member countries of the European Economic Area who do not have the nationality of those States will be issued with a residence permit valid for the same period as that of the person whose dependant they are.

889. When the foreign (non-Community) minor is the descendant of foreigners subject to the general regime, in order to enter Spain he will require the appropriate visa, issued in due form, valid, and entered in his passport, travel document or as a separate document. The child will require a residence permit or a visa permitting residence for purposes of family reunification, depending whether he intends to live temporarily with a father or mother resident in Spain or to reside under the family reunification procedure.

890. The residence permit can be issued to a foreign minor wishing to remain in Spain for up to three months in every six-month period. Although the Implementing Regulations of Act 7/1985 contain no specific provision for the eventuality of a person wishing to enter Spain to visit one of the parents or a family member, the purpose of the visit will be mentioned in the application and in the conditions attaching to the proposed stay. When the person requesting the residence permit is a child, he or she may be asked to furnish parental authorization to travel.

891. In order to reside in Spain the child will need a family reunification residence permit. This requirement may be waived in certain circumstances: "Exceptionally, a waiver of the visa requirement may be granted by the competent authorities where the applicant's good faith can be assumed and one of the following situations applies: [...]

(e) foreign minors:

who are the children of Spaniards or of foreigners lawfully resident in Spain;

who have been taken under judicial guardianship constituted by Spaniards or foreigners lawfully residing in Spain, such that they possess the elements necessary to produce effects in Spanish territory. " (art. 2(e) of the Order of 11 April 1996 of the Ministry of Justice and the Interior, regulating visa exemptions).

892. Children born in Spain of foreign residents will require neither a visa nor a visa waiver in order to obtain a residence permit.

893. In addition to a visa, persons to be reunited require, on arrival in Spain, a residence permit for family reunification. If the children were born in Spain they will automatically acquire the same type of residence permit as either of the parents holds. The period of validity of the residence permit is contingent on the reunifier's legal residence in Spain and the continuation of the circumstances that led to its issuance. The reunifier's children will obtain their own residence permit when they reach the age of majority.

894. Specific provision is made for the situation of minors who are subject to the guardianship of the competent public agencies: "On application by the organ exercising guardianship, a residence permit shall be granted, the effects of which shall be retroactive, to the time when the minor was placed in the custody of the services responsible for the protection of minors in the Autonomous Community in

question. If the minor has no documentation and for any reason cannot be issued with documentation by the authorities of any country, he or she shall be documented in accordance with the provisions of article 63 of these Regulations." (Implementing Regulations of Act 7/1985).

895. The Implementing Regulations of Act 7/1985 sought to offer adequate protection to foreign minors in a situation of desamparo. Minors in this situation - as determined by the civil legislation - will be placed in the charge of the services responsible for protection of minors in the Autonomous Community in question, and the Government Procurator's Office will be notified of the fact. In no case shall these minors be subject to the expulsion measures provided for in article 26.1 of Act 7/1985.

896. Where the children in a situation of desamparo are asylum-seekers, account will be taken of the provisions of the asylum legislation: the children will be placed in the charge of the services responsible for the protection of minors and the Government Procurator's Office will be notified of the fact. The minor's legal guardian will represent him while the application is being processed.

897. In all other cases, the competent public agencies will collaborate with the services responsible for protection of minors to secure family reunification of the minor in his or her country of origin or the country where the family is living. Repatriation of the minor will also be possible when the services in the country of origin that are responsible for the protection of minors assume responsibility for him. Collaborative mechanisms are established between the Spanish services responsible for protection of minors and those in the country of origin, with a view to organizing reintegration in the family whenever possible. Article 13.1 of the Implementing Regulations of Act 7/1985 requires the Spanish authorities to ensure in every case that the return of the minor cannot pose a threat to his integrity or to persecution of the minor or of his family members.

898. Expulsion is an administrative sanction that may be applied to foreign minors (though never, as has been seen, to those in a situation of desamparo), albeit with certain limitations: children who are below the age of majority or incapacitated and who are the dependents of foreign residents cannot be expelled, provided they have legally resided in Spain for more than two years. In addition, account must be taken of the general rule established in article 99.3 of the Implementing Regulations: they may not be expelled unless the offence committed is that of "being implicated in activities seriously detrimental to public order or to the internal or external security of the State, or conducting any type of activities contrary to Spain's interests or that may harm Spain's relations with other countries", or involves the commission of a further offence within one year of the commission of an offence of the same nature punishable by expulsion, if they are legally resident and meet the following criteria: (a) to have been born in Spain and resided lawfully in Spain for the past five years; and (b) to have permanent resident status.

899. With regard to the measures associated with expulsion, account must be taken of the provisions of article 108.8 of the Implementing Regulations of Act 7/1985, on the placement of minors in detention centres prior to expulsion, as was indicated in section C of this chapter.

900. With regard to the processing of applications for family reunification when the parents and the child reside in different States, the regulation of the procedure assumes that the family member is living abroad. The intention is to verify, before she or she enters Spain, that all the statutory requirements are fulfilled; accordingly, a family reunification visa is required. In other words, unless a visa waiver is obtained, a family member already living in Spain who has entered under other arrangements is not permitted to apply for a residence permit for reasons of family reunification.

901. The family reunification procedure receives priority treatment.

902. The foreign resident wishing to reunite his family requests, from the governmental authority of the province in which he resides, a report certifying that he meets the requisite criteria, namely: that he has means of subsistence and sufficient guarantees of health assistance and housing for himself and his family.

903. The family member seeking to enter Spain for purposes of family reunification submits an application for a visa for family reunification to the diplomatic mission or consulate in whose area he resides.

904. The diplomatic mission or consulate forwards the application, accompanied by a report and the necessary documentation, to the Ministry of External Affairs. The Ministry informs the local government authority that it has received the visa application in due form, and requests the authority to transmit the relevant report. The report of the government authority imposes a binding obligation on the reunifier to comply with the criteria he is required to meet.

905. Upon authorization by the Ministry, the diplomatic mission or consulate will decide whether to grant or refuse the visa, and, where applicable, will issue it. Decisions on applications for visas for family reunification must in any case be taken within three months. Upon arrival in Spain, the family member applies for a residence permit for family reunification. This application is also accorded priority, and in this case the deadline for a decision is a month and a half.

906. The regime for reunification of members of families of Spaniards or of nationals of other member States of the European Union and other member countries of the European Economic Area involves simplified formalities.

907. As for foreign minors requesting asylum and their right to family reunification, two different situations must be distinguished: minors availing themselves of the asylum request of one of their parents through the "family extension" clause (article 10 of the Asylum Act); and minors requesting asylum for themselves or accompanied by persons who are not their parents, who, in application of the "family extension" clause in that article of the Asylum Act, will be entitled to extension of the right of asylum to their parents ("ascendant relatives within the first degree").

908. As for dependent minors included in their parents' asylum request, submission of the request by the parents implies provisional residence by the children (if they have accompanied their parents) or their right of legal entry into Spanish territory (if they are still in the country of origin), thereby guaranteeing family reunification. The effects of the granting of asylum extend to the children.

909. Children in a situation of desamparo seeking asylum are covered by the general regime of foreign minors in a situation of desamparo, and are thus entrusted to the care of the Autonomous Community's services for the protection of minors; their cases are brought to the attention of the Government Procurator's Office; they are protected against expulsion; and - upon application by the guardianship body - granted a residence permit, together with documentation, if they have none. In addition, the guardian assigned to such minors by law will represent them during the processing of the asylum application, "which must comply with the criteria contained in the international agreements and recommendations applicable to the minor seeking asylum".

910. As for their right to family reunification, this too is covered by article 10 of the Asylum Act, on "family extension" of asylum, which allows them to reunite with their parents in Spain. However, as the asylum legislation does not provide for any specific treatment of children seeking asylum, none of its provisions guarantees them, in principle, the possibility of reunification with their siblings who are also

minors. It is assumed that, once in Spain, the minor's parents will initiate the procedures to ensure that their other children below the age of majority are admitted to Spanish territory.

911. The rules governing the entry of foreigners contained in the Implementing Regulations to Act 7/1985 cover the case of a minor who may wish to visit a parent with whom he does not normally live. A residence permit may be issued to a foreign minor wishing to remain in Spain for up to three out of every six months. As has already been indicated, although the Regulations make no specific provision for entry in order to visit one of the parents or a family member, that eventuality is covered when the purpose of the journey and the conditions of the proposed stay are specified in the application. When the person requesting the residence permit is a minor, parental authorization to travel may also be required.

912. Spain is also a party to certain conventions that include measures to facilitate the exercise of the right of access. Thus, a purpose of the Convention on the Civil Aspects of International Child Abduction, concluded at The Hague on 25 October 1980, is "to ensure that rights of custody and access under the law of one Contracting State are effectively respected in the other Contracting States". It is applicable to any minor who has had his or her habitual residence in a State party immediately prior to the violation of the rights of custody or access. Under the terms of the Convention, the request the purpose of which is to organize or guarantee the effective exercise of the right of access may be submitted to the central authorities of the States parties to the Convention. Those authorities are obliged to cooperate to ensure peaceful enjoyment of the right of access and compliance with all the conditions to which it may be subject, adopting all necessary measures to eliminate obstacles to its exercise.

913. Spain has recently signed an Agreement with Morocco on judicial assistance, recognition and execution of court decisions concerning the right to custody and the right of minors to visit and return, concluded in Madrid on 30 May 1997. A request may be submitted to the central authority with a view to organizing or protecting the right to visit. The authority - acting directly or through the Government Procurator's Office or the Government Attorney - must take or arrange for the necessary measures to eliminate obstacles to the peaceful realization of the right to visit and must have recourse to the competent jurisdiction to organize or protect it. Furthermore, a preferential regime is established for the recognition and execution of court decisions relating to the right to visit.

2. Measures adopted by the Autonomous Communities

914. The Autonomous Communities comply with the aforementioned rules and, through advisory services set up for that purpose, facilitate the procedures and documentation required to make reunification effective.

915. Article 22 of Catalonia's Act 8/1995 of 27 July, on care and protection of children and adolescents, establishes that in the case of children resident in a foreign State and travelling to Catalonia to enjoy their right to visit one or both parents, the authorities of the State of habitual residence and the persons having custody of the minor may request the Autonomous Government to ensure that the persons with whom the minor is to reside in Catalonia sign an undertaking to return him or her on completion of the visit.

916. When a minor habitually resident in a foreign State has been transferred to Catalonia in violation of the rights of custody, those having custody of him may request the Autonomous Government of Catalonia to mediate with a view to securing the minor's return to his habitual residence.

D. Illicit transfer and non-return (art. 11)
(CRC/C/58, para. 78)

917. Among the criminal law measures adopted to guarantee respect for the rights of custody and visit, the new 1995 Criminal Code classifies as a minor offence - though not as the offence of disobedience - punishable with a fine of one to two months' minimum wage, any violation by the parents, guardians or custodians of the judge's ruling, involving seizing the minor, removing him from the custody established by the court decision or by a decision of the public agency having guardianship over him, withdrawing him from the guardianship establishment, family, person or institution to which he has been entrusted, or not returning him when obliged to do so.

918. As for the measures taken to avoid and combat unlawful transfers of children abroad, these fall into three categories.

1. International cooperation to secure the speedy restoration of the status quo

919. As was stated in paragraph 154 of its initial report, Spain has ratified the Convention on the Civil Aspects of International Child Abduction, concluded at The Hague on 25 October 1980.

920. The Convention aims to protect minors, at the international level, from the harmful effects they might suffer as a result of unlawful transfer or retention; to establish procedures guaranteeing the immediate return of the minor to his or her State of habitual residence; and to safeguard the right to visit. The Convention urges States to have recourse to any emergency procedures available to them. For the performance of the obligations it imposes, each State party to the Convention appoints a Central Authority. In Spain the Central Authority is the Technical Secretariat of the Ministry of Justice, whose responsibility it is to promote collaboration between the competent Spanish authorities with a view to securing the immediate return of minors.

921. Any person, institution or agency maintaining that a minor has been transferred or retained in violation of the right of custody may apply to the Central Authority of the minor's habitual residence or of any State party so as to secure, with its assistance, the minor's return.

922. In order to ensure adequate performance of this obligation, the Protection of Minors Act (1/1996) amended articles 1901 et seq. of the Civil Proceedings Act.

923. The competent court will be the court of first instance in whose geographical jurisdiction the minor who has been unlawfully transferred or retained is living. The following may promote the procedure: the person, institution or agency to whom the right of custody of the minor has been assigned; the Spanish Central Authority responsible for performance of the obligations imposed by the Convention; and any person designated by that Authority to represent it. The proceedings will take place through the intervention of the Government Procurator's Office and the interested parties may act under the direction of counsel. The proceedings will be accorded preferential treatment and will take place within six weeks of submission of the application to the court for the return of the minor. Upon application by the person initiating the proceedings or the Government Procurator's Office, the judge may order provisional custody of the child as provided for in the Act and any other security measure he may deem appropriate. The judge must, within 24 hours, make an order formally summoning the person who has abducted or is retaining the child, on a date to be determined and in any case within the three days following, to appear before the court with the child and to indicate whether he or she agrees voluntarily to the return or contests it on one of the grounds laid down in the Convention. Articles 1905 to 1909 of the Civil Proceedings Act establish the procedure that the judge must follow if the person summoned appears, and also if he or she fails to appear. In either case the Government Procurator's

Office intervenes, the child is given a hearing, and his or her best interests serve as the principle guiding the proceedings.

924. With regard to the 1980 Hague Convention, Spain and the United Kingdom have exchanged notes constituting special agreements with a view to repealing some provisions that may entail restrictions on the return of minors, concerning the use of English and Spanish by the respective authorities.

925. As for the application of this Convention by the courts, mention may be made of the Judgement of the Supreme Court of 22 June 1998, in a case concerning the abduction of a minor by one of the parents during the separation proceedings in a mixed marriage. The Court upheld the appeal brought by the Government Procurator's Office against the decree of the Provincial High Court, declaring that the decree should have interpreted the Convention in accordance with the interpretative rules and the purpose of the Convention, rather than applying interpretations that thwarted that purpose.

926. The aims of the Agreement concluded between the Kingdom of Spain and the Kingdom of Morocco on judicial assistance, recognition and execution of court decisions concerning the right to custody and the right of minors to visit and return, concluded in Madrid on 30 May 1997, include guaranteeing the return of displaced or unlawfully retained minors to one of the two States. It applies to any unemancipated minor under 16 years of age who is a national of one of the two States.

927. The Spanish Central Authority is the Ministry of Justice, which shall communicate directly with the Moroccan Ministry of Justice. Requests are directed to the Central Authority of the minor's State of habitual residence prior to his displacement or non-return, and the Authority will transmit the request to the Central Authority of the other State. Once the request for return has been submitted to the Central Authority, the competent judicial authority must order - except as otherwise provided in the Convention itself - the child to be returned within a period of six months. If the request for return has been submitted after the six months following the unlawful displacement have elapsed, the judicial authority shall also order the return of the minor, unless it can be demonstrated that the child has become integrated in his new environment or that his return may expose him to physical or psychological danger or to an intolerable situation. In order to invoke this exception, the judicial authority shall take account solely of the best interests of the child and the information provided by the authorities of his or her previous place of residence.

2. Elimination of exorbitant criteria in matters of international jurisdiction

928. In article 22.3 of its Judiciary (Organization) Act, Spain retains a criterion in matters of filiation and relations between the parents and children that may be qualified as exorbitant. This is the criterion that the applicant must be a Spanish national, one which enables the Spanish national to apply to be awarded guardianship and custody of the child regardless of the place where the latter habitually lives. This criterion encourages the removal of the child from his or her habitual residence to Spain, without the consent or even the knowledge of the other parent, with a view to obtaining the protection of the courts through a favourable and effective judgement.

929. As for the law applicable, article 9.4 of the Civil Code provides that "the character and content of filiation, including adoptive filiation and relations between the parents and children, shall be regulated by the personal law of the child, and, if that cannot be determined, by the law of the habitual residence of the child." Article 22.3 of the Judiciary (Organization) Act taken in conjunction with article 9.4 of the Civil Code may result in the Spanish courts being considered to have jurisdiction to hear the application by a Spanish parent, and in Spanish law being applied to resolve the question. This may in turn encourage the parent to seek a haven in Spain from which to obtain an award of custody, removing

the child from the jurisdiction of his own natural court in order to place him under that of the parent's own court.

3. Flexibilization of the regime of recognition and execution of foreign decisions concerning parental authority

930. The European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children was signed at Luxembourg in 1980.

931. This Convention, too, to which Spain is a party, relies on the establishment of a Central Authority - which in the case of Spain is the Technical Secretariat of the Ministry of Justice - to which application may be made by any person who has obtained in one contracting State a ruling on custody of a minor and who wishes to obtain recognition or execution of that ruling in another contracting State. Under its article 7, decisions on custody handed down in one contracting State shall be recognized and, when enforceable in the State of origin, shall be enforced in any other contracting State. Accordingly, in the case of illicit transfer, the Technical Secretariat of the Ministry of Justice, when called upon to do so, shall ensure that the minor is returned immediately.

932. Pursuant to article 17.1, Spain initially reserved the right to refuse recognition and execution of decisions relating to custody of minors in the cases provided for in articles 8 and 9 of the Convention. That reservation was withdrawn with effect from 28 July 1995.

933. The Agreement with Morocco also contains provisions concerning recognition and execution of court decisions, its article 11 setting out the sole grounds on which recognition may be refused.

E. Recovery of maintenance for the child (art. 27, para. 4) (CRC/C/58, para. 79)

1. Measures adopted by the State

934. The parents are obliged to maintain their children who are subject to parental authority. That obligation also extends beyond the scope of parental authority, to cover children who have reached the age of majority or are emancipated. The concept of "maintenance" must be taken to include the resources essential for sustenance, housing, clothing and medical assistance but also for the child's education and training. In particular, as regards the latter, the parents' obligation subsists when the child has not completed training for reasons not of his or her own making (art. 142 of the Civil Code).

935. In the framework of parental authority, article 154 of the Civil Code establishes: "Parental authority shall always be exercised for the benefit of the children, with due regard to their personalities, and includes the following duties and powers: (1) to care for them, to keep company with them, to maintain them, to instruct them and to provide them with a full education."

936. As a general preventive measure, the judge, ex officio, on the application of the child itself, of any relative or of the Government Procurator's Office, may order such measures as he deems necessary to ensure recovery of maintenance and provide for the future needs of the child in the event of the parents' failure to fulfil that duty, (art. 158.1 of the Civil Code). Under the First Additional Provision of the Protection of Minors Act (1/1996), the rules on non-contentious jurisdiction shall be applicable to give effect to the provisions of this article.

937. Failure by the parents to perform this duty may result in deprivation of parental authority (art. 170 of the Civil Code).

938. In cases of nullity, separation or divorce, the parents continue to have a duty to maintain the children, (ibid. art. 92, para. 1), even if they do not have parental authority over them (ibid. arts. 110 and 111).

939. With a view to guaranteeing recovery, article 93 of the Civil Code requires the judge to fix each parent's contribution towards maintenance, together with any measures he may deem necessary to ensure that the payments are at all times effective and appropriate to the children's economic circumstances and needs.

940. With regard to measures taken to ensure payment of maintenance, there is a summary procedure, regulated by articles 1609 to 1617 of the Civil Proceedings Act, intended to obtain an expeditious provisional award of maintenance.

941. Article 226.1, second paragraph, of the 1995 Criminal Code punishes anyone who fails to provide the necessary assistance as laid down in law for the sustenance of his or her descendants. As for the safeguarding of maintenance ordered by court decision or by a judicially approved agreement, in cases of legal separation, divorce, annulment of the marriage, filiation or maintenance proceedings in respect of the children, article 227 of the Criminal Code punishes with 8 to 20 weekends' detention anyone who fails to pay such maintenance for two consecutive months or four non-consecutive months. To avoid delays in the recovery of maintenance, the legislation establishes that the penalty for this offence shall include payment of arrears as a civil liability component.

942. Constitutional Court Judgement 67/1998 of 18 March 1998, delivered in Remedy of Amparo 109/95 already referred to in other sections of this report, proclaims the fundamental right to non-discrimination on grounds of birth in cases of payment of maintenance.

943. When the parents or persons with economic responsibility for the child reside in a State other than that in which the child resides, the appropriate means of ensuring that he or she will receive maintenance are the provisions of international conventions to which Spain is a party, which may operate in three areas, namely: jurisdiction, applicable law, and recognition and performance of maintenance orders.

944. With regard to international jurisdiction, article 22 of the Judiciary (Organization) Act allows an application to be submitted to a Spanish court when the defendant is domiciled in Spain or when the person to whom the maintenance is owed is habitually resident in Spanish territory.

945. With regard to applicable law, the Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations, to which Spain is a party, designates, in the first instance, the internal law of the habitual residence of the maintenance creditor. Only if that law does not require the debtor to pay maintenance will the law of their common nationality apply, or, if they do not share a nationality or if the law thereby designated also does not award maintenance to the creditor, will the law of the authority seized apply.

946. With regard to Agreements on recognition, which facilitate and increase the efficacy of decisions within a jurisdiction other than the one in which they were handed down, it should be noted that Spain is a party to the Hague Conventions of 15 April 1958 and of 2 October 1973, which entered into force for Spain on 10 November 1973 and 1 September 1987 respectively.

947. Concerning guarantees to ensure recovery of maintenance, in the framework of the international cooperation necessary for ensuring their effectiveness, mention should be made of the United Nations

Convention on the Recovery Abroad of Maintenance, concluded in New York on 20 June 1956, to which Spain has been a party since 1996.

948. The instrument dated 20 December 1991 ratifying the Agreement of 4 November 1987 between the Kingdom of Spain and the Eastern Republic of Uruguay on conflicts of law in matters of maintenance for minors and recognition and performance of court orders and settlements relating to maintenance regulates cases in which "a minor has his habitual residence in the territory of one of the parties and the person obliged to pay maintenance habitually resides or has property or income in the territory of the other party. [...] The applicable law, at the election of the creditor, is that of the creditor's habitual residence or that of the habitual residence of the debtor, in one of the States parties, or the law of the State party where the debtor has property or income."

2. Measures adopted by the Autonomous Communities

949. In this area the autonomous administrations take action in the framework of the civil and criminal legislation referred to above.

F. Children deprived of their family environment (art. 20)
(CRC/C/58, paras. 80-82)

1. Measures adopted by the State

950. When an unemancipated minor is for any reason not subject to the parental authority of the parents, Spain's legal order provides for the establishment of the guardianship regulated in articles 215 et seq. of the Civil Code.

951. At the same time it establishes a regime of immediate protection, providing that when it becomes known that a person must be subjected to guardianship and as long as no court decision terminates the procedure, the Government Procurator's Office shall be responsible for his or her representation and defence.

952. It is for the judge to order the guardianship, having heard the closest relatives, any other persons he may deem appropriate, and in every case the ward if he or she is old enough to form an opinion, and always if he or she is 12 years of age or over (art. 231 of the Civil Code).

953. For the appointment of the guardian, the judge must by law always take account of the child's best interests, bearing in mind that the legislature indicates that it considers it desirable to integrate the minor into the guardian's family life (ibid. arts. 234, 235 and 240).

954. The guardianship functions constitute a duty that must always be exercised in the interests of the ward. In every case, their performance is subject to control both by the court and by the Government Procurator's Office (ibid. arts. 216, 232 and 233).

955. The guardian's functions fall into three areas:

(a) administration of property: the guardian is the legal administrator of the ward's patrimony and is obliged to perform that administration with the diligence of a "reasonable man" (ibid. art. 270). In order to perform the most important legal acts of a patrimonial nature, the guardian requires judicial authorization (ibid. arts. 271-273);

(b) representation of the ward: the guardian is the minor's representative except as regards those acts he is able to perform by himself, by explicit provision either of the law or of the declaration of incapacity (ibid. art. 267).

(c) personal life: the guardian is obliged to care for the ward and, in particular, to maintain him, instruct him and provide him with a "full education" (ibid. art. 269).

956. If at any time the guardian appointed is affected by any circumstance rendering him incapable of performing the task, or if he misconducts himself by failing to perform his duties or by demonstrating manifest incompetence in their exercise, he will be removed from the guardianship. The same civil sanction will be imposed if serious and persistent problems of coexistence arise between himself and the ward (ibid. arts. 247-250).

957. In addition to this institutional protection, provision is made for other mechanisms to protect children when, in spite of being subject to parental authority or guardianship, they do not in practice enjoy effective protection.

958. The legislation in force distinguishes between those situations in which a lack of protection of the child is foreseeable, and those in which it is actual.

959. With regard to the former, article 172 of the Civil Code provides that when the parents or guardians, as a result of serious circumstances, are unable to care for the child, they may request the competent public agency to take custody of him for such time as may be necessary.

960. The transfer of custody must be confirmed in writing, indicating that the parents or guardians have been informed of the responsibilities they continue to have with respect to the child, and of the manner in which custody is to be exercised by the Administration.

961. Any subsequent change in the manner of exercise, in addition to being accompanied by a statement of reasons, must be communicated to the parents or guardians and to the Government Procurator's Office.

962. As regards the second type of situation of lack of protection, those which our legislation refers to as "situations of desamparo", the procedure is for guardianship to be assumed by the public agency responsible, in the territory in question, for protection of minors (arts. 172.1, 222.4 and 239 of the Civil Code).

963. Both custody by the public agency at the request of the parents or guardians and the custody it assumes in the context of the guardianship it exercises as a result of the "situation of desamparo" must take the form of residential or family fostering (ibid. art. 172.3).

964. The former is exercised by the director of the establishment in which the child is housed, the latter by a person or persons designated by the public agency.

965. In either form of fostering, the objectives sought must always be the best interests of the child, and reintegration into the family of origin when not contrary to those interests. Similarly, efforts must be made to ensure that the siblings are placed in custody with the same institution or person (ibid. art. 172.4).

966. Family fostering involves the full participation of the child in family life and imposes on the foster-parent the obligations to care for, keep company with, maintain, instruct and provide a "full education" for him or her (ibid. art. 173.1, first para.).

967. Pursuant to article 173 bis of the Civil Code, depending on the objective sought, the categories of family fostering are as follows:

(a) Temporary family fostering: a transitional arrangement, adopted either because the child's circumstances are such as to give reason to suppose that he will soon be reintegrated in his own family, or pending the adoption of a more lasting protection measure;

(b) Permanent family fostering: this arrangement will be adopted when the child's age or his or the family's other circumstances render it advisable and the child care services make a recommendation to that effect. In this case the public agency may request the court to grant the foster-parents powers of guardianship so as to facilitate the performance of their responsibilities, always having regard to the child's best interests.

(c) Pre-adoptive family fostering: this will be formalized by the public agency when it submits the proposal for adoption, with a report by the child care services, to the judicial authority, provided that the foster-parents meet the criteria necessary to adopt, have been selected and have notified the public agency of their consent to the adoption, and provided the child's legal situation is such as to permit his or her adoption.

968. The public agency may also formalize pre-adoptive family fostering when it considers, prior to the submission of the proposal for adoption, that the child needs a period in which to adjust to the family. This period shall be as brief as possible, and in no case shall exceed one year.

969. As for the establishment of the fostering arrangement, it must be formalized in writing, and the following must give their consent:

(a) The public agency (whether or not it exercises guardianship or custody);

(b) The persons who are to foster the child;

(c) The child, if 12 years of age or over;

(d) The parents, if known and not deprived of parental authority, and the guardian, if any.

970. If the parents or guardian do not consent to, or oppose, the fostering arrangement, it may be ordered only by the court in the child's best interests. However, the public agency may - always in the child's best interests - order a provisional fostering arrangement which will continue until a court decision is handed down. For this type of fostering, the consent of the parents or guardian is not of course necessary (art. 173.2 and 3 of the Civil Code).

971. The document formalizing the family fostering will be transmitted to the Government Procurator's Office and must contain the following particulars:

(a) the necessary notifications of consent;

(b) The form and expected duration of the fostering;

(c) The rights and duties of each of the parties, and in particular:

(i) The periodicity of visits by the child's family;
(ii) The system of coverage by the public agency or others with civil liability for injury to the child or that he may inflict on third parties;
(iii) Apportionment of responsibility for the cost of maintenance, education and h ealth care;

(d) The content of any monitoring by the public agency, having regard to the purpose of the fostering, and an undertaking by the foster-family to cooperate therewith;

(e) Any economic compensation that the foster-parents may be entitled to receive;

(f) If the foster-parents are acting in a professional capacity or if the fostering is to take place in a residential home, this shall be expressly mentioned;

(g) A report by the child care services.

972. As regards foreign minors, see section D of this chapter.

973. In all cases, the Government Procurator's Office must, at least once every six months, ascertain the situation of any minor who is subject to a protection measure, including an evaluation of the desirability of continuing the measure, having regard to the circumstances.

974. In cases where the minor is detained in an open, semi-open or closed centre as a consequence of an order by a juvenile court under Organizational Act 4/1992 reforming the Act regulating the Jurisdiction and Procedures of Juvenile Courts, the competent organ of the Administration shall report periodically on the effects and result of the execution of the measures to the judicial body that has ordered them. Article 2.3 of the Organizational Act allows for the possibility of suspending the sentence and reviewing the measures imposed in the light of any changes in the minor's circumstances.

2. Measures adopted by the Autonomous Communities

975. The Autonomous Communities, through their own or concerted resources and in accordance with the priorities imposed by each case, implement the protective measures included in national legislation and in their own legislation cited in previous paragraphs. As already mentioned, the autonomous legislatures adopt the general principle that minors are to be detained in protection centres only when no other more suitable arrangement exists.

976. All the Autonomous Communities have adopted specific regulations governing the authorization, registration, accreditation and inspection of social care establishments and services, and establishing the material and operational requirements enabling them to open and function.

977. In particular, the centres for minors must, in addition to complying with the general requirements and conditions, draw up an education programme for the centre and also individually tailored education programmes reflecting the situation, development and socio-familial prognosis of each child. The regulations also cover the composition and qualifications of the technical teams working with the children.

978. Some Autonomous Communities have drawn up regulations governing the requirements and conditions necessary for private institutions and entities involved in the protection of children to act as

"collaborating entities" with the autonomous administration, as mediators for family fostering, as well as rules governing the functioning of that arrangement.

979. When, after a study of the social and family situation, it is decided that the child cannot remain in his family environment and separation is proposed, the Autonomous Communities each initiate procedures which, although varying in some respects, also have a number of features in common.

980. The possible alternatives are studied and evaluated. First, consideration is given to the possibility of the child being fostered by his or her own extended family, and an assessment is made of those family units that have expressed their willingness to do so. Where this measure is not feasible or fostering with the extended family is not considered desirable, the possibility of fostering with another family is considered, having regard to the availability of foster-families. When this measure, too, is not feasible, the alternative of residential care is considered, again having regard to existing resources.

981. The circumstances that may determine the choice of residential care as the most suitable alternative include:

(a) Children needing urgent care while the necessary study, assessment and proposals for technical and administrative action are formulated;

(b) Children whose personal and/or family circumstances pose a risk of a family fostering arrangement breaking down;

(c) Where there is no possibility of fostering in a family or this alternative is deemed unsuitable (older children, children and adolescents with special problems, socialization difficulties);

(d) Children whose needs call for a highly structured and organized environment;

(e) Children with histories of repeated separation or negative experiences with other foster-families;

(f) Children requiring temporary referral while the causes leading to the adoption of the protection measure are rectified or it is confirmed that reintegration into the family is not an option;

(g) Children in need of preparation in order to cope with their family situation and subsequent fostering in a family.

982. When it is decided to place children in a residential care centre, they are automatically enrolled in the corresponding educational establishment, at the level most appropriate to their stage of schooling, providing them with remedial programmes where necessary.

983. The autonomous legislation also reflects the national legislation by making express provision for reviewing the situation of minors housed in centres at least once every six months. Meetings are held periodically to monitor the situation of minors in the centres and those fostered in families, and on the basis of the results of the assessment, a decision is taken on whether or not to change the protection measure.

984. Some Autonomous Communities have set up programmes, such as Castile-La Mancha's "16-20 Emancipation Programme", to facilitate emancipation of, and access to the labour market by, older children who have been or are currently under the guardianship of the autonomous administration.

3. Measures adopted by social organizations

985. Those social organizations which, through agreements concluded with the Autonomous Communities, collaborate by providing residential care and accommodation for minors subject to protection measures, adhere to the procedures established in the national and autonomous legislation as regards the regime of visits, ongoing monitoring of the minor's development, and working with families with a view to the child's possible reintegration in the nuclear family.

986. However, some of these organizations report difficulties in dealing with children, especially older children, from very deprived socio-familial and economic backgrounds who present serious problems of adaptation and behaviour; these difficulties no doubt necessitate improved training of professionals and adjustment of education programmes.

987. The fact that these centres also cater for children from ethnic minorities calls for an adaptation of existing resources and training of professionals able to work with these children.

G. Adoption (art. 21)
(CRC/C/58, paras. 83-85)

1. Measures adopted by the State

988. As was indicated in the initial report of Spain and in the Introduction to this second periodic report, a key change regarding adoption was the promulgation of Act 21/1987 of 11 November, enacted precisely to remedy the lack of control of pre-adoption procedures.

989. In line with the Convention on the Rights of the Child, the Legal Protection of Minors (Organization) Act, 1/1996 of 15 January, partially amending the Civil Code and the Civil Proceedings Act, completes this reform, by amending, as was indicated in chapter I of this second report, article 176 of the Civil Code. The new Act imposes a condition of suitability of the persons adopting, to be assessed by the public agency and the court.

990. Pursuant to Final Provision 22 of Act 1/1996, the public agencies competent to initiate the adoption procedure are those designated by the Autonomous Communities and the towns of Ceuta and Melilla, in accordance with their respective organizational rules.

991. Since 1993 some Autonomous Communities have regulated the requirements and conditions allowing private entities and institutions involved in the protection of children to work in collaboration with their administrations in matters of inter-country adoption, and with other aspects of adoption generally.

992. With regard to the procedure for adoption, the procedural rules are to be found in articles 1829 to 1832 of the Civil Proceedings Act, drafted pursuant to Act 21/1987 of 11 November.

993. Under article 176.1 of the Civil Code as reformulated in Act 1/1996, adoption is constituted by court order, and will always take account of the best interests of the child adopted and the suitability of the adopter or adopters for the exercise of parental authority.

994. The procedure is that laid down in Book III of the Civil Proceedings Act, which deals with acts of non-contentious jurisdiction. Also regulated are the forms of assent by the adopter's spouse and the parents of the child adopted, and their renewal and lapse (art. 1830 of the Civil Proceedings Act). Thereafter the persons giving assent are summoned to appear before the court. The order made by the

judge constituting the adoption will be appealable as to both effects (ibid., art. 1831). Throughout the handling of the procedure, the judge may order appropriate protection measures regarding the adopted minor's person and property (ibid., art. 1832).

995. Under article 175.1 of the Civil Code, adoption requires the adopter to be over 25 years old.

996. In an adoption by both spouses (or a man and woman constituting a permanent partnership in a affective relationship analogous to a marital relationship - Third Additional Provision to Act 21/1987 of 11 November) it is sufficient for one of the two to have attained that age. In any event, the adopter must be at least 14 years older than the child adopted.

997. The adoption proceedings may be initiated in one of two ways: the public agency is the normal channel for initiating the court proceedings for adoption. The proposal for adoption submitted by the public agency to the court must include the following information:

(a) The personal, family and social particulars and the means of livelihood of the adopter or adopters selected and their relationship with the child being adopted, detailing the reasons for ruling out other interested parties;

(b) Where applicable, the last known address of the adopter's spouse, where the latter's consent is necessary, and that of the parents or guardians of the child being adopted;

(c) Information as to whether all parties concerned have given their formal consent before the public agency or in an authentic instrument.

998. The technical criteria for suitability assessed and regulated by the Autonomous Communities include the following considerations:

(a) The wish to adopt the child should be shared not only by the applicants, but by all members of the nuclear family;

(b) There should be a broad relational environment conducive to the integration of the adopted child;

(c) Acceptance of the child's personal characteristics;

(d) Clear and valid motivation showing a desire to accept a child;

(e) Ability and disposition to confront and tackle difficulties that may arise in the process of integrating children;

(f) Applications judged to show discriminatory attitudes making adoption contingent on the child's physical attributes, gender or social and family origins will be considered unfavourably;

(g) Any unjustified rejection of a child will be considered unfavourably, except on grounds of his or her state of health;

(h) Account will be taken of the habitability of the home, the infrastructure in the area of residence, the availability of a necessary minimum of time that can be devoted to the child's upbringing, and the presence of children of an age similar to that of the child to be adopted.

999. Adoption on the application of the person wishing to adopt is the exceptional mode of initiating the adoption proceedings, and is permissible only when the child to be adopted meets one or more of the requirements set forth in article 176.2 of the Civil Code, namely:

(a) Is an orphan and a relative of the adopter within the third degree by affinity or of consanguinity;

(b) Is the child of the adopter's spouse (matrimonial, non-matrimonial or adoptive);

(c) Has been legally fostered under a pre-adoptive arrangement for more than a year, or has been the adopter's ward for the same period of time;

(d) Has attained the age of majority or is an emancipated minor.

1000. In such cases, the proposal by the person wishing to adopt must be addressed to the competent judicial authority and must, in particular, contain the following data, pursuant to article 1929 of the Civil Proceedings Act:

(a) The applicant's personal, family and social particulars and reference to the means of livelihood;

(b) The relationship to the child to be adopted;

(c) The relevant submissions demonstrating that the child to be adopted meets one or more of the criteria laid down in article 176.2 of the Civil Code;

(d) Where applicable, reports by the collaborating entity and any other reports or documents the applicant may see fit to submit.

1001. Pursuant to article 175.2 of the Civil Code, the following may be adopted:

(a) Unemancipated minors (the Civil Code does not specify a minimum age for adoption);

(b) Emancipated minors, provided that, immediately prior to emancipation, there was an uninterrupted period of fostering or cohabitation begun before the child to be adopted was 14 years old.

Under article 175.3 and 4 of the Civil Code, the following may not be adopted:

(a) A descendant;

(b) A relative within the second degree of collateral consanguinity or affinity;

(c) A ward by his or her tutor until the audited general account of the tutorship has been definitively approved;

(d) Except in the case of adoption by both spouses, no one may be adopted by more than one person. It must also be borne in mind that, under the Third Additional Provision of Act 21/1987, in addition to the spouses, a man and woman constituting a permanent partnership in a affective relationship analogous to a marital relationship may also adopt a child together.

1002. The adopter or adopters and, if 12 years of age or over, the child to be adopted must consent to the adoption in the presence of the judge.

1003. Under the second paragraph of that provision, the following must agree to the adoption:

(a) The adopter's spouse, except in cases of legal separation by enforceable judgement or de facto separation by mutual consent and in authentic form;

(b) The parents of the child if unemancipated, unless they have been deprived of parental authority by enforceable judgement or are the subject of legal proceedings with a view to such deprivation.

1004. The spouse of the adopter and the parents of the child to be adopted will not be required to agree to the adoption if they are prevented by disability from so doing. Such disability will be assessed, with a statement of reasons, in the court decision ordering the adoption.

1005. The mother may not agree to the adoption until 30 days have elapsed following the delivery.

1006. Lastly, the third paragraph of article 177 establishes the list of persons to whom the judge must simply accord a hearing:

(a) Parents who have not been deprived of parental authority, when their agreement is not necessary for the adoption;

(b) The tutor, and, where applicable, the guardian or guardians;

(c) The child to be adopted, if under 12 years of age and old enough to form an opinion;

(d) The public agency, with a view to assessing the suitability of the adopter, when the child to be adopted has been legally fostered by the agency for more than a year.

1007. As regards employment issues, both labour and social security legislation extend to adoptive parents the entitlement to receive financial allowances during the period of maternity leave and to request leave of absence in order to care for children.

1008. With regard to the legal content of the parent-child relationship created by adoption, adoptive filiation gives rise to the same effects as biological filiation. In this connection it should be added that, as family names are determined by filiation (art. 109 of the Civil Code) and the effects of adoptive and of consanguineous filiation are identical (ibid. art. 108), the adopted child therefore takes the adopter's names.

1009. Secondly, article 178 of the Civil Code provides for the extinction of the legal links between the adopted child and his or her former family. However, legal authorization (ibid. art. 178.2) exists for their continuance, as regards either the father's or the mother's family, in the following circumstances:

(a) When the child adopted is the child of the adopter's spouse and the latter has died;

(b) Where only one of the parents has been determined by law and the adopter is of a different sex to that parent: the adopted child if 12 years of age or over and the father or mother whose link is to continue, provided that effect has been requested by the adopter.

1010. Lastly, adoption is irrevocable (ibid. art. 180.1).

2. Measures adopted by the Autonomous Communities

1011. The public agencies of the Autonomous Communities responsible for protection of minors play a key role in the process of adoption: with a few exceptions, adoption is judicially constituted upon a prior proposal by the autonomous public agency.

1012. Formulation of the proposal involves a number of powers that are broadly regulated by the autonomous legislation cited in response to paragraph 12 of the guidelines and in other sections of this report, and exercised by specific organs (such as adoption councils and guardianship commissions).

1013. Inter-country adoption is one of the areas that have seen the greatest number of legislative innovations in recent years, as a result, first, of international cooperation, chiefly through international treaties; secondly, of a significant reform in Spanish national law; and thirdly, of substantial recent activity on the part of the autonomous legislatures.

(a) Intercountry adoption through international cooperation in the framework of treaties

1014. In 1995, Spain was the first country receiving children for adoption to ratify the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, concluded at The Hague on 29 May 1993. The Convention becomes a mechanism to "establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law; to establish a system of cooperation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children; to secure the recognition in Contracting States of adoptions made in accordance with the Convention." (art. 1). At the time of ratification Spain formulated the following declaration: "Each of the 17 Autonomous Communities shall be the Central Authority within its territory and with respect to the residents thereof...".

1015. Spain has signed administrative protocols coordinating procedures in intercountry adoptions with the following countries: Romania (2 April 1993); Peru (21 November 1994); Bolivia (5 April 1995); Colombia (13 November 1995); and Ecuador (18 March 1997). Protocols are currently being negotiated with Costa Rica, Honduras and the Philippines.

1016. Mention should also be made of two bilateral agreements that may offer potentialities in matters of intercountry adoption: the treaty between the Kingdom of Spain and the People's Republic of China on judicial assistance in civil and commercial matters, concluded in Beijing on 2 May 1992, and the Agreement on judicial assistance in civil matters between the Kingdom of Spain and the Republic of Bulgaria, concluded in Sofia on 23 May 1993.

1017. Under Spanish law, an adoption made abroad before a foreign authority is an act of non-contentious jurisdiction, and as such is subject to a simplified recognition procedure (retrospective entry in the Register of Births, recording the act and its lawfulness under Spanish law, as provided for in article 9.5 of the Civil Code).

1018. The bilateral agreements with China and Bulgaria should also be taken into account in this context, since the treaty with China on recognition and enforcement of court decisions includes within its scope "court orders in civil and commercial matters" (art. 17), and the agreement with Bulgaria is regarded as applicable "in civil, family and commercial matters" (art. 18). Furthermore, both agreements exempt certain documents from authentication, a fact that has important practical implications in the area of intercountry adoption: the treaty with China exempts "those documents mentioned in the present treaty" (art. 26); and the treaty with Bulgaria, entering into greater detail, exempts documents that "emanate from a court of justice, administrative documents, notarial acts and official certifications such as memoranda of registration and authentications of dates and signatures in a private document" (art. 23).

(b) Intercountry adoption in the framework of national legislation

1019. The Legal Protection of Minors (Organization) Act (1/1996 of 15 January) introduced substantial reforms to Spain's legislation in this area. First, under the heading "intercountry adoption" its article 25 provides as follows:

> "1. In matters of intercountry adoption the public agencies are responsible for:
>
> (a) Receiving and handling applications, either directly or through duly accredited agencies;
>
> (b) Issuance, in every case, of certifications of suitability, and, when the country of origin of the child being adopted so requires, issuance of the monitoring undertaking;
>
> (c) Accreditation, control, inspection and preparation of guidelines for action by the agencies performing functions of mediation within their territory.
>
> The mediating functions to be performed by the accredited agencies shall be the following:
> - provision of information and advice to interested parties in matters of intercountry adoption;
> - intervention in the processing of adoption documents by the competent authorities, both Spanish and foreign;
> - provision of advice and support to persons applying to adopt, regarding procedures and measures to be undertaken in Spain and abroad.
>
> Only registered non-profit-making agencies, the purpose of which as set forth in their statutes is the protection of minors, which have the material resources and multidisciplinary teams necessary for the performance of the functions entrusted to them, and which are directed by persons qualified by their moral integrity and their training to work in the field of intercountry adoption, may be accredited.
>
> The public agencies may withdraw accreditation, in proceedings in the presence of both parties, from those mediating agencies that fail to fulfil the conditions justifying its conferral or that infringe the legal order in their actions.
>
> 2. Communication between the competent Spanish Central Authorities and those of other States shall be coordinated in accordance with the provisions of the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, concluded in The Hague on 29 May 1993 and ratified by Spain in an instrument dated 30 June 1995.
>
> 3. No financial gain shall ever accrue from intercountry adoptions, other than such as is necessary to cover inevitable costs.
>
> 4. The competent public agencies shall establish a register of claims made by persons who have recourse to the agencies accredited in this article."

1020. The Second Additional Provision establishes that "for the purposes of recording adoptions made abroad in the Spanish Register, the responsible official shall assess the concurrence of the requirements of article 9.5 of the Civil Code."

1021. The Second Final Provision of the Protection of Minors Act (1/1996) amends the third, fourth and fifth paragraphs of article 9.5 of the Civil Code, both as regards consular adoption and as regards the requirements for recognition in Spain of an adoption constituted before a foreign authority. The new wording is as follows:

> "In constituting the adoption, Spanish consuls shall have the same powers as the judge, provided that the adopter is Spanish and the child being adopted is domiciled in the consular district. The preliminary proposal shall be made by the public agency of the adopter's last place of residence in Spain. If the adopter has not resided in Spain in the last two years, no preliminary proposal will be necessary, but the consul shall obtain from the authorities of the adopter's place of residence such information as is necessary to assess his or her suitability.
>
> In adoption constituted by the competent foreign authority, the law of the child being adopted shall apply as regards capacity and the necessary notifications of consent. The parties required by law to give their consent may do so before an authority of the country in which the constitution of the adoption was initiated or, subsequently, before any other competent authority. For the adoption of a Spaniard, the consent of the public agency in the last place of residence in Spain of the child to be adopted shall be necessary where applicable.
>
> An adoption constituted abroad by a Spanish adopter shall not be recognized in Spain if its effects do not correspond to those provided for under Spanish legislation. Nor shall it be recognized until such time as the competent public agency has declared the suitability of the adopter, if the adopter was Spanish and domiciled in Spain at the time of the adoption."

(c) Intercountry adoption at Autonomous Community level

1022. In recent years, innovative legislation regulating intercountry adoption has also been enacted by the Autonomous Communities.

1023. Various laws of the Autonomous Communities for the protection of minors expressly regulate matters of intercountry adoption:

(a) Catalonia's Act 8/1995 of 27 July, on care and protection of children and adolescents and amending Act 37/1991 of 30 December on measures to protect minors in a situation of desamparo and adoption measures, the Seventh Additional Provision of which adds a fifth section entitled "Intercountry adoption" to Chapter II of Act 37/1991;

(b) The Canaries' Act 1/1997 of 7 February, providing comprehensive care for minors, article 77 of which regulates intercountry adoption;

(c) Galicia's Act 3/1997 of 9 June, on the family, children and adolescents, articles 31 and 36 of which also regulate this matter;

(d) La Rioja's Act 4/1998 of 18 March, on minors, article 67 of which reproduces almost verbatim the principles set forth in the Convention on the Rights of the Child.

1024. Moreover, in the framework of article 25 of the Protection of Minors Act, which introduces new powers in Spanish law to accredit collaborating entities in matters of international adoption, the Autonomous Communities have promulgated various decrees empowering these entities:

Andalusia: Decree 454/1996 of 1 October;

Aragón: Decree 16 (1997) of 25 February;

Balearics: Decree 187/1996 of 11 October;

Basque Country: Decree 302/1996 of 24 December;

Canaries: Decree 200/1997 of 7 August;

Castile-La Mancha: Decree 35/1997 of 10 March;

Castile and León: Decree 207/1996 of 5 September;

Catalonia: Decree 337/1995 of 28 December;

Extremadura: Decree 142/1996 of 1 October;

Galicia: Decree 34/1996 of 12 January;

Madrid: Decree 192/1996 of 26 December;

Murcia: Decree 66/1997 of 12 September;

Navarre: Decree 256/1996 of 24 June;

La Rioja: Decree 29/1997 of 9 May;

Valencia: Decree 168/1996 of 10 September.

1025. As regards the principle of subsidiarity, established in article 21 (b) of the Convention and referred to in article 4 (b) of the Hague Convention, responsibility for guaranteeing this principle lies basically with the authorities of the child's country of origin, and Spain is, in matters of intercountry adoption, a receiving country.

1026. Furthermore, the requirement of equivalence of standards and safeguards in the country of origin and the receiving country, dealt with in Chapter V of the Hague Convention, finds its fullest expression in the condition provided for in the Civil Code for recognition of an adoption constituted before a foreign authority: "An adoption constituted abroad by a Spanish adopter shall not be recognized in Spain if its effects do not equate with those provided for in Spanish legislation."

1027. The Directorate-General of Registers and Notaries (DGRN), through an extremely extensive "case law" in the matter, has established the minimum equivalences: a severing of links with the family of origin, equivalence of effect with natural filiation, and irrevocability of adoption. In practice these requirements have implied non-recognition or "conversion" of simple adoptions and kafalah constituted abroad into adoptions that may be recorded directly in the Spanish Civil Register. However, these requirements are further refined in more recent decisions.

1028. The requirement that adoption must not result in improper financial gain for those involved is to be found in various provisions of the Hague Convention.

1029. For its part, the Protection of Minors Act, in its article 25.3, embodies this general principle and extends it to all intercountry adoptions, whether or not they fall within the scope of the Hague Convention.

1030. The four legislative acts of the Autonomous Communities referred to above also include this principle.

1031. The requirement that improper financial gain should not arise with respect to the collaborating entities - in other words, that they should be non-profit-making - is set forth in the Protection of Minors Act and in the autonomous legislation referred to above.

1032. In the area of criminal law rules, to ensure that, in cases of adoption, placement of the child does not give rise to improper financial gain for those participating, article 221.1 of the Criminal Code makes it a criminal offence to hand over a minor to another person in order to establish a relationship analogous to filiation with the minor, in return for financial reward and circumventing the legal procedures for adoption, as described in chapter IV.B.

1033. Supervision and post-adoption monitoring, covered in the Hague Convention, are also established in article 25 of Act 1/1996, which entrusts the public agencies with responsibility for issuing the monitoring undertaking and for implementing it when so requested by the country of origin of the child to be adopted, as well as in all decrees conferring such functions on the collaborating entities.

1034. The requirement that the authorities intervening in intercountry adoption should have competence is embodied in various precepts of the Spanish legal order.

1035. In the first place, the entire system established through the Hague Convention is based on cooperation between competent authorities that accord reciprocal recognition to one another's competence.

1036. The administrative protocols for cooperation with Romania, Peru, Bolivia, Colombia and Ecuador, already referred to, specify the form of cooperation in intercountry adoption procedures, determining who are the appropriate interlocutors in each of these countries and in Spain.

1037. Furthermore, the national rules of international private law set forth in article 9.5 of the Civil Code and article 22.3 of the Judiciary (Organization) Act establish specific criteria as regards both direct competence (of the authorities that may order the adoption) and indirect competence (of the foreign authorities that have already ordered it, for purposes of its recognition in Spain).

1038. As regards the Spanish authorities, where a Spanish judicial authority is involved, article 22.3 of the Judiciary (Organization) Act indicates that the authority shall be competent "when the adopter or the adopted child is Spanish or has his or her habitual residence in Spain."

1039. Where the Spanish authority is consular, two requirements determine its competence: "that the adopter must be Spanish and that the adopted child must reside in the consular district" (art. 9.5 of the Civil Code); and that there must be nothing contrary thereto in the laws and regulations of the local State (art. 3 (f) of the Vienna Convention on Consular Relations of 24 April 1963).

1040. In the case of recognition in Spain of an adoption authorized by a foreign authority, the judge responsible for the Civil Register must ascertain the competence of the authority, extrapolating the criteria for competence set forth in article 22.3 of the Judiciary (Organization) Act.

H. Periodic review of placement (art. 25)
(CRC/C/58, paras. 86-87)

1. Measures adopted by the State

1041. See also chapter III.B and sections C and G of this chapter.

1042. As regards the possible placement of children in health institutions, the Twelfth Final Provision of the Protection of Minors Act (1/1996) amends article 21 of the Civil Code, establishing that:

> "The internment, for reasons of psychic disorder, of a person who is not in a fit state to decide on the measure for himself, shall require court authorization, even where that person is subject to parental authority. Such authorization must be given prior to the internment, except where urgent reasons necessitate the immediate adoption of the measure, which shall thereafter be notified to the judge as soon as possible and in any case within 24 hours. Minors shall in all cases be placed in a mental health institution appropriate to their age, upon a report by the services responsible for the care of minors."

1043. Children must thus always be placed in a mental health institution appropriate to their age, upon a report by the services responsible for their care.

1044. In addition to the provisions described in chapter III.B, article 21 of Act 1/1996 also establishes that:

> "(a) For purposes of ensuring protection of the rights of minors, the public agency competent in matters of protection of minors must inspect and monitor the institutions and services every six months, and whenever circumstances so require;
>
> (b) Likewise, the Government Procurator's Office must exercise vigilance over all institutions that cater for minors."

1045. In particular, with regard to unemancipated minors, the Act provides that they may be deemed incapable only when it may be reasonably foreseen that the cause of incapacity will persist after he or she has attained the age of majority, and exclusively at the request of those exercising parental authority or guardianship (arts. 201 and 205 of the Civil Code).

2. Measures adopted by the Autonomous Communities

1046. See sections C and G of this chapter.

3. Measures adopted by social organizations

1047. See sections C and G of this chapter.

I. Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39) (CRC/C/58, paras. 88-91)

1. Measures adopted by the State

1048. See also chapter VIII.C on sexual abuse.

1049. Ill-treatment and abuse of a child by those who are responsible for his care undoubtedly constitute a clear situation of desamparo, and, as such, will in most cases result in the assumption of guardianship by the administration, as described in section C of this chapter.

1050. In the area of civil law, attention should be drawn to the following legislative measures to protect children against any type of harm and injury while they are in the custody of a legal guardian:

(a) The father or mother may be totally or partially deprived of parental authority, by a decision based on failure to comply with the duties inherent therein or pronounced in criminal or matrimonial proceedings (art. 170 of the Civil Code).

(b) At the request of the Government Procurator's Office, of the adopted child or of his or her legal representative, the court authority may rule that the adopter involved in a case concerning deprivation of parental authority be excluded from the guardianship functions and rights under law incumbent on him or her with regard to the adopted child or his descendants, or with regard to his estate (ibid. art. 179.1).

(c) The judge, ex officio or upon application by the child himself, any relation, or the Government Procurator's Office, may adopt such measures as he deems appropriate with a view to averting danger to the child or avoiding injury to him (ibid. art. 158.3, first para.).

(d) The judge, where an application for annulment, separation or divorce has been granted, may (in the absence of a judicially approved agreement between the spouses), after hearing the parents and on an exceptional basis, order the children to be entrusted to another person or, in the absence of such person, to an appropriate institution, to be assigned guardianship functions that will be exercised under the authority of the judge.

(e) If at any time the guardian appointed is affected by any circumstance rendering him incapable of performing the task, or if he misconducts himself by failing to perform his duties or by demonstrating manifest incompetence in their exercise, he will be removed from the guardianship. The same civil sanction will be imposed if serious and persistent problems of coexistence arise between himself and the ward (ibid. arts. 247-250).

(f) Where serious problems of coexistence arise between the minor and the person or persons to whose guardianship he has been entrusted, the minor or any interested party may request his or their removal (ibid. art. 172.5).

1051. The criminal justice system contains mechanisms designed to sanction all forms of physical or mental violence, ill-treatment, neglect and exploitation of children.

(a) Protection of minors against offences committed by any person

1052. See also chapter IV.H.

1053. The Spanish criminal justice system prohibits all forms of physical violence against both adults and minors, punishing physical ill-treatment that does not cause injury to the physical integrity or mental health of the victim (art. 617.2 of the Criminal Code), ill-treatment causing slight injury, that is, requiring only optional first aid (ibid. art. 617.1), and assault damaging to the physical integrity or physical or mental health of the person, that is, those injuries requiring medical or surgical treatment in addition to optional first aid (ibid. arts. 147-156). Only in the case of the latter criminal offences, namely, serious and less serious injuries (art. 147), is there any specific provision for a more severe penalty where the victim is a child under 12 years of age (art. 148.3).

1054. As for neglect, article 618 of the 1995 Criminal Code punishes anyone who, having found an abandoned child, fails to hand him or her over to the authorities or to his family or who, where applicable, fails to administer the necessary aid.

1055. Lastly, in order to protect children from exploitation, article 232 of the Criminal Code punishes the use or provision of children for begging, even in covert form, with provision for a more severe penalty in cases involving the use of violence or intimidation, the supply of substances harmful to the child's health, or trafficking, i.e. the use or provision of the child in exchange for financial consideration. In the former case, the penalty is six months' to one year's imprisonment, in the latter, one to four years' imprisonment.

(b) Protection of minors against offences committed by the parents or extended family

1056. With regard to physical violence, the second paragraph of section 2 of article 617 of the Criminal Code provides for a more severe penalty in cases of ill-treatment within the family. Such a penalty will be applicable to parents, guardians or other members of the household who physically ill-treat children living with them.

1057. If the physical violence is habitual, it becomes an offence under article 153 of the Criminal Code, which punishes any person who habitually inflicts physical violence on his own or the spouse's children, a member of the household or a ward, with six months' to three years' imprisonment, provided that they live with him or are subject to his authority, guardianship, curatorship or de facto custody, without prejudice to any other penalties he may incur as a result of the injury caused.

1058. The 1995 Criminal Code makes no provision for a more severe penalty in the case of assault on children's moral integrity by the parents or extended family (see chapter IV.H).

1059. Neglect or negligent treatment of a child by the parents or extended family is classified as a criminal offence under three provisions:

(a) article 189.2 of the Criminal Code punishes anyone who, having a minor under his or her authority, guardianship, custody or foster-care, fails to do everything possible to prevent the minor from continuing to engage in prostitution, or fails to have recourse to the authorities to secure that end if unable to provide adequate custody;

(b) the second paragraph of article 229 of the Criminal Code punishes cases of neglect involving the permanent abandonment of the child by the parents;

(c) article 230 classifies temporary abandonment of the child as a criminal offence.

(c) Offences committed by those responsible for the child in any type of public or private institution

1060. Offences involving the infliction of physical violence on children by persons responsible for them outside the family environment differ in no respect from the generic offences referred to above (arts. 147-156 and 617.1 and 2).

1061. With regard to mental violence against or degrading treatment of children, if the offence is committed by an individual the applicable provision is article 173, which punishes the generic form of such conduct. When the perpetrator of the degrading treatment is a public official abusing his powers, the offence is punishable under article 175 of the Criminal Code. The offence of torture is punishable under article 174. See also chapter IV.H.

1062. Lastly, Spain's criminal justice system punishes neglect of children implying permanent abandonment (art. 229.1 of the Criminal Code) or temporary abandonment (ibid. art. 230 in conjunction with art. 229.1) of the child by the person having custody.

1063. As regards the possibility for the child to report incidents, either directly or through a representative, a distinction must first be drawn between the obligation to report and the right to do so.

1064. Under article 260 of the Criminal Proceedings Act, minors are exempted from compliance with the obligation incumbent on all natural persons to inform the authorities of the existence of a punishable act; that article waives such obligation in the case of "children below the age of puberty or persons who do not enjoy the full use of their mental faculties".

1065. Generally speaking, it may be said that in no case does the Criminal Proceedings Act place any obstacles in the way of children wishing to report a criminal offence, even though it does not expressly accord them a right to do so.

1066. As for the right to report offences, the Criminal Proceedings Act appears not to require those exercising that right to have attained the age of civil majority. However, that generalization requires qualification by means of a further distinction: while it is true in the case of any public offence, different requirements currently govern semi-public offences, in which a report by the victim is first necessary in order for the offence to be prosecuted.

1067. In such cases, where the victim is a minor the new Criminal Code requires the Government Procurator's Office to initiate criminal proceedings.

1068. Such offences are the following: assisted reproduction without the consent of the woman, sexual assault, harassment or abuse, offences involving disclosure and revelation of secrets, offences against family rights and duties, offences involving intellectual and industrial property, commercial and consumer crime, and offences involving associations.

1069. In the case of so-called private offences, i.e. those requiring a complaint by the victim in order for a prosecution and criminal proceedings to be initiated, which, under the new 1995 Criminal Code have been reduced to the offences of injurious allegations and calumny, the complaint must be submitted by the child's legal representative (art. 215.1 of the Criminal Code).

1070. In criminal matters, article 233.1 of the Criminal Code calls for the intervention of the Government Procurator's Office in cases where the child has been temporarily or permanently abandoned or has ceased to be provided with the financial assistance necessary for his or her maintenance, with a view to ensuring that the competent authority takes appropriate measures to ensure the custody and protection of minors. This provision is supplemented by the Second Additional Provision of the Code, which imposes an obligation on the government authority immediately to notify the public agency responsible for the protection of minors in the territory and the Government Procurator's Office - thereby enabling them to act in accordance with their respective powers - should it become aware of any case of a minor engaged in prostitution, whether or not voluntarily, with the approval of the persons exercising family, social and moral or de facto authority; in the absence of such persons; or where such persons have abandoned or are failing to take custody of the child.

1071. The Right to Education (Organization) Act, 8/1985 of 3 July, recognizes and defines certain basic rights and duties of pupils, also according them the rights of association and assembly in educational establishments. The Act confers certain disciplinary powers on the State School Councils, in accordance with the provisions regulating pupils' rights and duties, and also accords certain disciplinary powers to the School Councils in the schools operated under agreements. These provisions were implemented through the promulgation of Royal Decree 1543/1988 of 28 October, on the rights and duties of pupils, which specifies the content of each of these basic rights and duties and requires the education authorities to take specific action to promote their effectiveness.

1072. Subsequently, under the provisions of the General Education (Organization) Act (1/1990 of 3 October), article 1 of which establishes that one of the fundamental aims of the education system is training in respect for fundamental rights and freedoms and in the exercise of tolerance and freedom within the framework of the democratic principles of coexistence, Royal Decree 732/1995 of 5 May was promulgated, establishing the rights and duties of pupils and rules governing social conduct in schools. This Royal Decree enters into detail concerning the rules of social conduct in schools, guarantees the enjoyment of rights and seeks to ensure performance of their duties by pupils, and prescribes disciplinary measures, positive in character and never involving violence, in response to behaviour contrary to those rights and duties. In no circumstances may the pupils be subjected to abusive or degrading treatment or treatment implying disrespect for their physical and moral integrity or dignity, or to physical or moral punishment or sanctions incompatible with that integrity and dignity.

Experimental Programmes on Ill-Treatment

1073. In 1991 the Directorate-General of Social Action, Children and the Family initiated a Programme of Action comprising a series of projects whose purpose was to draw up effective basic strategies to prevent and respond to ill-treatment of children, with a mandate to which attention was drawn in the Introduction to this report. It includes an "Experimental Programmes on Ill-Treatment" project.

1074. With the specific aim of improving the quality of the system for the protection of children at risk or experiencing a crisis of ill-treatment, it consists of a series of initiatives under the generic title "Experimental Prevention and Intervention Programmes for Potential or Actual Ill-Treatment in Families", jointly financed by the Ministry of Labour and Social Affairs and the Autonomous Communities, with the latter contributing at least 50 per cent of the funding.

1075. The basic criteria underlying and inspiring these programmes are as follows:

(a) the Autonomous Communities' contribution should be funded under specific budget headings;

(b) methodologically, their status as research programmes should be guaranteed, enabling scientifically sound conclusions to be drawn from them with regard to two types of project:

(i) prevention: early detection by social services, the standard health network, kindergartens, etc., and detection and treatment of risk situations before and immediately after the child's birth;

(ii) treatment: in response to clear evidence of ill-treatment.

1076. The principal aim of these programmes is to experiment with new pilot schemes for the prevention and treatment of child abuse at autonomous level. With this is mind, two complementary lines of action have been developed, namely, aids to funding and technical support.

1077. The tables in annex A show the respective financial contributions of the Ministry of Labour and Social Affairs and the Autonomous Communities in recent years.

1078. As was mentioned in chapter I.H.4, the Ministry of Labour and Social Affairs has also, in collaboration with the University of the Basque Provinces, promoted the production and publication of protocols and guides for the detection, notification, investigation and assessment of ill-treatment of children. These materials have been distributed to social services professionals specializing in dealing with ill-treatment of children in all the Autonomous Communities.

1079. Table 1.2 in annex A lists other recent publications dealing with the problem.

1080. As was mentioned in chapter I.H.4, the Ministry has also, in collaboration with the University of Valencia, promoted the production of teaching materials for training social services professionals to deal with ill-treatment: these materials are currently being used in pilot schemes, and will shortly be published and distributed as supporting documentation for teacher training courses.

2. Measures adopted by the Autonomous Communities

1081. See also sections C and G of this chapter.

1082. Some Autonomous Communities have enacted their own legislation defining situations of desamparo in more detail, requiring the presence of factors such as physical or mental ill-treatment or sexual abuse by members of the family, or by third parties with the consent of family members. Such situations activate the full system for protection of children in the Autonomous Community where the child is living.

1083. In recent years the Autonomous Communities have enacted rules regulating the system at various levels, covering such aspects of the issue as:

(a) Procedures for reporting, and the setting up of confidential help lines providing assistance and advice: communications are channelled through the municipal or community social services, which are also responsible for investigating the situation, and, where there is found to be a situation of desamparo, for referring it to the specialized services. Some laws provide for reporting by the children themselves and the need to promote mechanisms and agencies enabling child victims to draw their situation to the attention of those public services able to assist them (see chapter I.H and chapter III.D). Education and health services professionals are also normally required to report these situations, subject to the usual reservations;

(b) Procedures for intervention: in addition to the protocols for the detection and assessment of ill-treatment prepared by the Ministry of Labour and Social Affairs and referred to above, some

Autonomous Communities have published their own protocols on this issue for social, health and education services professionals. These protocols help simplify procedures so as to provide a flexible and coordinated response on the part of all bodies that may be called upon to intervene: health and educational staff, procurators, judges, the police, and protection services in public agencies. Some Autonomous Communities have prepared handbooks on intervention in risk situations and situations of desamparo, and guidance for the teams responsible for investigating and dealing with cases of ill-treatment. In some of the Communities, the social, health and education services have systems for monitoring cases of ill-treatment and social situations posing a risk of ill-treatment;

(c) Preventive and awareness-raising activities: the Children's Programmes referred to in chapter I.G and the measures referred to in chapter I.K.2 include many activities (experimental programmes on ill-treatment and prevention of child abuse and sexual abuse, training programmes, publications and campaigns) conducted in the Autonomous Communities, often in coordination with social organizations working with children, aimed at preventing ill-treatment in society and in families and raising awareness of the need for forms of communication with children that respect their rights and avoid ill-treatment. (See also the information in chapter I.K.) Many of the family support programmes referred to in sections A and B of this chapter offer undoubted potential in the prevention of ill-treatment;

(d) Reintegration and rehabilitation of children: specialized protection activities are guided by the principle of reintegration in the family. Accordingly, the treatment must pursue that aim, working to eliminate the factors that led to the ill-treatment, or, where that is not possible, offering the child a family environment, either through his or her extended family, or in a foster family, as illustrated in previous paragraphs. If these measures are not feasible, it is often possible to propose adoption. In addition to measures to provide the child with a family or a protective environment, in many cases through the services entrusted with his protection, steps are also taken to secure his physical and mental rehabilitation through the health system and the standard resources available in the territory, in every case seeking to ensure that the protective measures taken cause the least possible disruption to the child's life.

3. Measures adopted by social organizations

1084. As stated in chapter III.D, some organizations working with children offer a telephone help line, which enables children to report cases of ill-treatment without having recourse to an adult.

1085. One of the Platform organizations has organized a number of activities relating to the theme of ill-treatment of children: in Madrid in November 1996, in collaboration with Swedish Save the Children, a conference was held on "Monitoring European Policies on Sexual Abuse and Child Prostitution: Rehabilitation and Prevention", to analyse and study monitoring of implementation of the Programme of Action approved at the Stockholm World Congress Against Commercial Sexual Exploitation of Children; study European policies to combat sexual abuse and child prostitution; and propose preventive action and measures to secure the rehabilitation of child victims of sexual abuse. At this meeting, the experts agreed on the need for the following measures:

(a) Generalized introduction of prevention programmes in schools;

(b) Enhanced treatment of victims and perpetrators;

(c) Creation of national networks of NGOs, local and regional Governments and national authorities to detect cases and establish effective mechanisms to deal with the problem.

1086. During 1997 the organization was designing a programme to raise awareness of and prevent sexual abuse, targeted on persons working with children in the education and health sectors, the social services and the judiciary. This programme sets out to:

(a) Prepare professionals to offer an adequate response to detection and reporting of cases of abuse;

(b) Develop preventive programmes for children and the general public;

(c) Train potential teachers in the dissemination of good practice in the areas of prevention, detection and treatment of sexual abuse.

1087. In collaboration with Swedish Save the Children and the Department of Justice of the Directorate-General of Child Care of the Generalitat of Catalunya, the organization also held a conference on corporal punishment in June 1997.

1088. Also in collaboration with the Department of Justice of the Catalan Directorate-General of Child Care, and with the Federation of Associations to Combat Physical Ill-Treatment, in October 1997 it organized a seminar on corporal punishment entitled "Educating, not Beating".

1089. In coordination with other children's organizations, it launched a campaign to combat corporal punishment of children. The objectives of this campaign are to make parents aware of the need to use positive educational models; to encourage children themselves to participate directly in the activities undertaken; and to work for a total ban on corporal punishment under the Civil Code.

1090. Another of the Platform organizations is a Nationwide Federation of Associations carrying out intervention programmes and training activities in the areas of prevention and treatment of child abuse.

VI. BASIC HEALTH AND WELFARE

A. Disabled children (art. 23)
(CRC/C/58, para. 92)

A. Measures adopted by the State

1091. See also chapter VII on integration in schools.

1092. Article 49 of the Spanish Constitution proclaims the duty of the public authorities to carry out "a policy of preventive care, treatment, rehabilitation and integration of the physically and mentally disabled and those with sensory disabilities, providing them with the specialized care that they require, and affording them special protection in order that they may enjoy the rights conferred by this Title on all citizens".

1093. The main regulatory provisions at State level are to be found in Act 13/1982 of 7 April on social integration of the disabled, which provides for various social and financial benefits; and in Royal Decree 334/1985 of 6 March, regulating special education; as well as in the legislation of the Autonomous Communities to be referred to hereinafter.

1094. As regards the enjoyment of their rights without discrimination of any kind, Royal Decree 348/86 of 10 February orders the replacement, in all legislative provisions, of the terms "subnormality" and "subnormal persons" by the terms "disability" and "disabled persons".

1095. In the sphere of employment, Royal Decree 1368/85 of 17 July regulates work by disabled people in special work centres, a situation that the Second Additional Provision of the General Social Security Act expressly specifies as covered by the corresponding regime of the Social Security System.

1096. Article 38 of Royal Decree-Law 1/1994 of 20 June approving the amended text of the General Social Security Act establishes that:

> "1. Protective action by the Social Security System shall include: [...]
>
> (e) provision of social services to be established in the areas of re-education and rehabilitation of invalids and assistance to the elderly, and in such other areas as may be deemed appropriate.
>
> 2. Likewise, and to complement the services included in the previous subparagraph, social assistance benefits may also be granted."

1097. As regards the education system, as will be seen in chapter VII, action in this area is the responsibility of the Ministry of Education and Culture, in those Autonomous Communities to which powers in educational matters have not been transferred. Multidisciplinary child guidance and educational support teams and an early intervention team assess children with special educational needs and provide specialized support and out-of-school treatment.

1098. As will be seen in chapter VII, article 10 of Royal Decree 1333/1991 of 6 September, establishing the educational curriculum for infants, provides that "programmes [...] shall include, where appropriate, adjustments to the curriculum for the benefit of pupils with special educational needs".

1099. As regards access to health services, and as will be seen in section B below, the content of health strategies for children is based essentially on the Minimum Criteria for Mother and Child Care adopted by the Interterritorial Council of the National Health System, the principal focuses of which include prevention of disabilities and the following activities:

(a) Genetic counselling for parents, where there is a likelihood of the child being born with a defect as a result of its family medical history;

(b) Antenatal screening to diagnose chromosomal or metabolic abnormalities in the foetus;

(c) Early diagnosis of heredity diseases, through detection in the first days of life of metabolic, endocrinal or other changes likely to result in physical or mental damage to the child. At this stage appropriate treatment of children affected is begun;

(d) Early detection and treatment of retarded mental development.

1100. In November 1996 the 14th meeting of the Sectoral Conference on Social Affairs approved a Plan of Action for Disabled Persons 1997-2002, on the basis of an evaluation of the implementation of Act 13/1982 on social integration of the disabled, and of an undertaking initiated by the Congress of Deputies in a report on the problems of the disabled, which, in its conclusions, urged the competent administrations to coordinate policies and services in that area. At the February 1997 Sectoral Conference a proposal to establish a committee to monitor and develop the Plan was approved.

1101. The Plan is divided into the following programmes, many of which have an impact on the child population:

1. Promotion of health and prevention of deficiencies:
    - 1.1 Mother and child health and prevention of perinatal deficiencies;
    - 1.2 Promotion of health in schools and prevention of infant-juvenile deficiencies and maladjustment;
    - 1.3 Road safety and prevention of traffic accidents;
    - 1.4 Health in the workplace, prevention of industrial accidents and occupational diseases;
    - 1.5 Health programmes for adults and the elderly and prevention of chronic disabling diseases;
2. Health assistance and comprehensive rehabilitation:
    - 2.1 Early detection and treatment;
    - 2.2 Comprehensive rehabilitation of incapacitated workers;
    - 2.3 Comprehensive rehabilitation of the chronically sick and persons permanently incapacitated for work;
    - 2.4 Comprehensive mental health rehabilitation;
3. Integration in schools and special education:
    - 3.1 Integration in infant and primary education;
    - 3.2 Integration in secondary education;
    - 3.3 Enrolment in special education;
    - 3.4 Occupational training;
4. Participation and integration in economic life:
    - 4.1 Occupational recuperation;
    - 4.2 Labour market placement and access;
    - 4.3 Economic and social protection;
5. Integration in the community and independent life:
    - 5.1 Family support;

5.2 Housing and accommodation;

5.3 Access and transport;

5.4 Leisure, culture, sport and tourism.

Implementation of the Plan calls for close intersectoral coordination and for particularly active participation on the part of the health and education services.

2. Measures adopted by the Autonomous Communities

1102. The Autonomous Communities, in exercise of the broad preventive powers conferred on them by the General Health Act (14/1986) and their own Statutes of Autonomy, perform important tasks in the field of prevention of diseases and deficiencies, through various measures:

(a) Sectoral regulation (mother and child health, health in schools, the fight against cancer, hepatitis control, prevention of AIDS, etc.);

(b) Organization of promotional and preventive activities in the framework of the Autonomous Communities' health plans;

(c) Setting up of intersectoral coordinating bodies, particularly between social, health and education services.

1103. There is a wealth of legislation concerning disabled persons, both in the laws on children and in the autonomous legislation on sport and leisure, which promotes active participation in the community and aid to encourage employment of the disabled and promote their integration in society and in various sectors of the labour market, as well as their full and active participation in the community.

1104. There is also legislation concerning the elimination of architectural obstacles and regional social insertion and protection plans targeted on the population suffering from various forms of disability; and on provision of transport, lifts and services. Ortho-prosthetic services and specialized health centres, care centres and crèches are available.

1105. The Autonomous Communities to which powers in educational matters have been transferred also promote measures to ensure diversification and integration in schools and remedial education for children with disabilities. As in the geographical areas managed by the Ministry of Education and Culture, the Autonomous Communities with educational powers of their own grant subsidies to those schools operated under agreements that need to hire auxiliary special education staff to cater for pupils with disabilities or special educational needs.

1106. The aids regulated by autonomous legislation include individual subsidies; educational grants to attend special schools and acquire public housing; tax benefits and public transport discounts and exemptions; and aids and subsidies for associations of disabled persons, which provide a number of services of all kinds, such as accommodation resources, training, recreation, information and psychological support.

1107. Special residential centres are provided to accommodate children with severe deficiencies, physical or mental disabilities or psychiatric disorders, in which a level of assistance commensurate with their needs can be guaranteed.

1108. Some Autonomous Communities have drawn up disabled persons' plans, care programmes for children with disabilities and support and relief programmes for families with disabled children. The specialized care services available under these plans to children born with or at risk of a deficiency include physiotherapy, speech therapy, psycho-motor therapy and early treatment in the Centres for Care of the Disabled, as well as guidance to families by multidisciplinary teams enabling them to provide adequate intervention. Some of these plans are organized on an intersectoral basis, covering the areas of health, employment, housing, social services, culture, recreation and leisure.

1109. The Regional Centres, which before their transfer to the Autonomous Communities were attached to the National Institute of Migration and Social Services (IMSERSO) of the Ministry of Labour and Social Affairs, diagnose, assess and provide guidance to disabled people, and also offer rehabilitation services.

1110. The Children's Plans drawn up by the Autonomous Communities include goals and actions for prevention and control of disabilities. Some Autonomous Communities have specific residential programmes for mentally disabled children.

1111. Some Autonomous Communities have developed specific training courses for staff working with disabled people.

1112. As regards the treatment of disabled children - especially those under the guardianship of the Administration - in the various laws on children, mention may be made of Andalusia's Act 1/1998 of 20 April, governing the rights and care of children; article 21 of Aragón's Act 10/1989 of 14 December, on protection of minors; article 3.3 of the Balearics' Act 7/1995 of 21 March, on guardianship and protection of disabled minors; article 23 of the Canaries' Act 1/1997 of 7 February, providing comprehensive care for minors; article 16 of Castile-La Mancha's Act 5/1995 of 3 March, on solidarity; article 28 of Castile and León's Decree 13/1990 of 25 January regulating the social action system; articles 26 and 30 of Catalonia's Act 8/1995 of 27 July, on care and protection of children and adolescents; Galicia's Act 3/1997 of 9 June, on the family, children and adolescents; articles 22 and 25 of Madrid's Act 6/1995 of 28 March, guaranteeing the rights of children and adolescents; and Murcia's Act 3/1995 on children.

1113. As regards health care, the Autonomous Communities to which health powers have been transferred and also those whose health services are managed by the National Health Institute abide by the Minimum Criteria for Mother and Child Care adopted by the Interterritorial Council of the National Health System, which, as has already been mentioned, include prevention of disabilities.

B. Health and health services (art. 24)
(CRC/C/58, paras. 93-98)

1. Measures adopted by the State

1114. The general health policies that apply equally to children in Spain are based on the Global Strategy for Health for All by the Year 2000 which WHO's Thirtieth World Health Assembly set as a target in 1977 and which subsequently, in 1984, was divided into 38 objectives by the WHO Regional Committee for Europe. That Strategy is a joint and concerted undertaking to ensure positive trends in health and welfare for the inhabitants of the Region. The adoption of such a diachronic and development-oriented approach involves recognizing what is truly the issue, namely, the health and welfare of Europe's children of today. Moreover, tackling the issue of "health for all" is the best strategy for increasing the likelihood of children being born healthy, and of parents who wanted to have children and who have sufficient time and resources to devote to nurturing, caring for and educating them; of their acquiring healthy lifestyles; and of their learning to relate healthily to their physical and social environment.

1115. Chapter Three of the Spanish Constitution recognizes health as an asset of primordial importance to which all citizens, regardless of their condition, have a right. This Chapter covers the right to protection of health, as part of the conditions and principles of social and economic policy and in harmony with the conceptual framework to which reference has already been made. Article 43 proclaims:

> "1. The right to protection of health is recognized.
>
> 2. It is incumbent upon the public authorities to organize and safeguard public health by means of preventive measures and the necessary health benefits and services. The law shall establish the rights and duties of all concerned in this respect.
>
> 3. The public authorities shall foster health education, physical education and sports. Likewise, they shall encourage the proper use of leisure."

1116. The general regulations governing health in Spain are to be found in the General Health Act (14/1986 of 25 April), which establishes the universality of the right to health protection as a basic principle (art. 1) and, as a general principle, provides that the resources and actions of the health system shall be directed first and foremost to the promotion of health and the prevention of illnesses (art. 3).

1117. Accordingly, any child in the care of a person without adequate economic resources is guaranteed the right to health assistance. Over and above a minimum income level, health coverage will depend on the level of contributions to one of the social security regimes.

1118. Other general principles of the General Health Act provide for equal access by all citizens to health benefits without discrimination of any kind, a health policy aimed at overcoming disparities between geographical areas, and community participation in health care; and for the development of a structure (the National Health System) guaranteeing the integrated and coordinated implementation of health measures (arts. 46 and 56).

1119. In order to make the right to health protection effective, this structure offers universal coverage and is publicly financed, and, reflecting the organization of the Spanish State as a whole, is differentiated so as to respect the individual characteristics of each Autonomous Community.

1120. The General Health Act also emphasizes intersectoral cooperation as a means of achieving health objectives. The Interterritorial Council is the body through which the criteria for such cooperation are set.

1121. As was mentioned in chapter II of this report, article 10 of the General Health Act recognizes a series of rights the exercise of which must be ensured by the Administration.

1122. Pursuant to article 1 of the Resolution of 16 September 1987 of the Technical Secretariat for Social Security, on recognition and realization of the right of children cared for in a family fostering arrangement to health assistance under the Social Security system,

> "children fostered in families by the associations or foundations lawfully constituted for such purposes shall be considered as fostered de facto by the person entitled with whom they live and, in consequence, shall have the right to health assistance under the Social Security system [...]".

1123. Under the Fourth Additional Provision of Act 21/1987, "a minor legally fostered with a person entitled to or a beneficiary of the right to health assistance, under any regime of the Social Security system, shall be entitled to receive such benefits for the duration of the fostering arrangement".

1124. Health care for immigrant children is covered by Royal Decree 155/1996 of 2 February, approving the implementing Regulations of the Rights and Freedoms of Foreigners in Spain (Organization) Act (7/1985 of 1 July), which recognizes the right to health assistance as proclaimed in the Convention on the Rights of the Child and the Protection of Minors Act (1/1996).

1125. The Act also refers explicitly to that right, regardless of whether the child's stay in Spain is lawful. Its article 10.3 provides as follows: "Foreign minors in Spain have the right to education. Foreign minors in situations of risk or under the guardianship or custody of the competent Public Administration have the right to health assistance and to the other public services, even if they are not legally resident in Spain."

1126. Royal Decree 63/1995 of 20 January organizes and systematizes direct and individual health care and benefits under the National Health System, establishing the content of child care up to 14 years of age. Primary child care includes, in addition to the general benefits, the following:

(a) Provision of health information and education to the children concerned and their parents, guardians, tutors, teachers or carers;

(b) Immunizations in accordance with the official health service schedule;

(c) "Healthy child" reviews under the health service programmes.

Oral and dental health care includes prevention and treatment for the child population: topical application of fluoride, fillings and fissure sealing.

1127. The National Health System provides universal health care free of charge to children with AIDS.

1128. Furthermore, Royal Decree 1575/1993 of 10 September provides for freedom to choose a general practitioner and paediatrician.

1129. The contents of the health strategies for children are based essentially on the Minimum Criteria for Mother and Child Care approved by the Interterritorial Council of the National Health System, which provide for a number of components:

(a) Prevention of disabilities (see section A);

(b) Supervision and monitoring of development up to the age of 14;

(c) Immunization;

(d) Care during pregnancy, and during and immediately after confinement.

1130. Component (b) above aims to protect and improve children's health from birth to the age of 14 through a cluster of programmed interventions to monitor their development, including individualized preventive interventions and other health promotion measures, as established in Royal Decree 63/1995, referred to above. The objectives of this component are:

(a) To contribute to the reduction of health problems prevalent among children;

(b) To prevent risks through monitoring of children's growth and their physical, mental and social development;

(c) To maximize the physical and psycho-social development potential of children identified as at risk;

(d) To offer families guidance, training and information enabling them to provide adequate support for their children's development;

(e) To provide children with training and information enabling them to participate actively in promoting their own health.

1131. This component employs the following measures:

(a) Periodic health examinations in the context of primary health care. After health checks at birth and in the first days of life, the child's health must be reviewed in the context of primary care, the frequency and content of the reviews depending on the child's age and individual circumstances. As a general rule, the examinations must include an evaluation of the child's nutritional status, growth and physical and psycho-motor development, sight and hearing tests, as well as appropriate immunizations in accordance with the immunization schedule. The health examination and other consultations must provide health education as regards life styles (physical exercise, diet, harmful habits) and prevention of risks (accidents), so as to enable parents to monitor their children's development;

(b) Updating of scales with representative samples of weight-for-stature development curves for the Spanish child population;

(c) Preparation of periodic reports with the results of the evaluation of child care services.

1132. The immunization component has the following objectives:

(a) To broaden basic immunization coverage - DTP, polio and MMR - to children aged 3, 5, 7, 15 and 18 months;

(b) To systematize the re-immunization policy for children aged 4 and 6 (DT, polio) and 14 and 16 (tetanus);

(c) To extend MMR immunization to children aged 11;

(d) To increase the number of kindergartens and schools complying with the immunization registration procedures;

(e) To establish a standardized immunization schedule for every Autonomous Community so as to improve epidemiological monitoring nationwide;

(f) To reduce declared hepatitis B morbidity.

1133. These objectives are achieved by means of the following measures:

(a) Maintenance of systematic immunization;

(b) Monitoring of children's immunization status on enrolment in nursery school, kindergarten and primary school, by means of an immunization register;

(c) Monitoring of children's immunization status through medical examinations in the 1st, 5th and 8th years of general basic education, by means of an immunization register;

(d) Establishment of a procedure for proper control of the potentially un-immunized child population;

(e) Application of appropriate epidemiological monitoring measures such as immediate notification of suspected cases of poliomyelitis and diphtheria, temporary closure of any school in which any case of poliomyelitis, diphtheria or measles has been declared, notification of any adverse reactions to immunization, etc.;

(f) Introduction of the single nationwide immunization schedule approved by Royal Decree;

(g) Health education for the entire population aimed at promoting immunization, with emphasis on acquainting parents of all newborn babies with the immunization schedule;

(h) Maintenance of the special programme for prevention and control of hepatitis B among the child population at risk, including immunization of infants and children aged 10-14;

(i) Monitoring of immunization indicators and coverage achieved in accordance with targets set in the immunization schedule.

1134. The component devoted to care during pregnancy and during and immediately after confinement has the following objectives:

(a) To maintain universal coverage of care before, during and immediately after confinement;

(b) To prevent problems associated with gestation, confinement and puerperium, providing care appropriate for the level of risk identified in each case;

(c) To ensure early identification of pregnancies;

(d) To increase coverage of pregnant drug-users by drugs control programmes;

(e) To extend psycho-prophylactic obstetric care (education of mothers and preparation for childbirth) to all pregnant women;

(f) To promote active participation by pregnant women and their partners in the health care process before, during and immediately after confinement.

1135. This component includes the following measures:

(a) Monitoring the normal course of pregnancy through periodic screening;

(b) Establishment of criteria for certification of obstetric and neo-natal centres and units, setting levels of assistance and focusing on the human aspects of care during confinement, in line with WHO guidelines. The criteria for certification must include minimum requirements in material and human resources and professional qualifications;

(c) Education in mothering and preparation for childbirth from the sixth month of pregnancy, including as a minimum, and where possible with the participation of the partner, advice on care during pregnancy, care of the newborn baby (feeding, lactation, etc.), family planning, post-natal exercise;

(d) Home visits in the first month after delivery for a general health assessment, instruction on post-natal care, care of the baby, monitoring of metabolopathies, exercise, psychological support;

(e) Post-natal consultation from the fourth to ninth weeks for a general health assessment and advice on family planning;

(f) Early identification and monitoring of risk pregnancies. Women with specific problems associated with a risk pregnancy will receive specialized individual monitoring;

(g) Formulation of health protocols to facilitate coordination between the various care services and community organizations, to ensure adequate screening and monitoring of the pregnancy, confinement and puerperium. Issuance and completion of identity cards for pregnant women;

(h) Training of primary health care staff in methods and techniques of education for health before, during and immediately following confinement;

(i) Establishment of protocols for action with the social services to improve identification of pregnant drug-users and other risk groups.

This component also includes measures concerning family planning.

1136. Promotion of healthy habits is an important instrument of policy in education for health. In this regard, the Agreement between the Ministry of Health and Consumer Affairs and the Ministry of Education and Culture establishes joint approaches to health education in areas such as prevention of drug dependency and sexually transmitted diseases (STDs), AIDS, education in sexual and affective relations, etc.

1137. The National School of Health and other centres in the Autonomous Communities have a Training Plan for Health Professionals, which includes post-graduate master's degree courses and single-subject courses.

1138. Treatment, prevention and epidemiological monitoring of AIDS are included in the measures under the National Health System referred to previously and the National AIDS Plan.

1139. Children who, having been orphaned as a result of AIDS or for other reasons, are in a situation of desamparo, are protected by the System of Social Care for Children (SASI), to which extensive reference is made in chapter V.

1140. Traditional practices that may particularly affect the health of girls and violate the principles of the Convention are non-existent in Spain. Were any such instances to arise as a result of the cultural specificities of some minorities, they would be treated in accordance with the legislation and under the protection system of the Spanish State.

1141. Article 2 of Royal Decree 880/1990 of 29 June, approving safety standards for toys, establishes that:

"1. Toys may be marketed only if they do not pose a risk to the safety and health of the users or third parties when used for their normal purpose or consistent with their foreseeable use, having regard to the behaviour to be expected of children.

2. Toys must, at the time of marketing and bearing in mind their foreseeable normal life, comply with the safety and health standards established in this provision."

1142. As regards international cooperation, see chapter I.J.

2. Measures adopted by the Autonomous Communities

1143. As already indicated, the Autonomous Communities regulate the provision of health care to children in accordance with the Minimum Criteria for Mother and Child Care approved by the Interterritorial Council of the National Health System, as regards both prevention, treatment, early detection and rehabilitation.

1144. Some Autonomous Communities include in their children's legislation specific reference to the right to health and health care, stressing the importance of education for health and the promotion of habits and behaviour that contribute to the quality of life.

1145. In this regard, mention may be made of article 10 of Andalusia's Act 1/1998 of 20 April, governing the rights and care of children; articles 14 et seq. of the Balearics' draft Statute of Minors; article 25 of Catalonia's Act 8/1995 of 27 July, on care and protection of children and adolescents; articles 41 and 42 of Madrid's Act 6/1995 of 28 March, guaranteeing the rights of children and adolescents; and articles 20 and 21 of Murcia's Act 3/1995 of 21 March, on children.

1146. The autonomous legislation establishes the right of children to receive information, appropriate to their age and stage of mental, affective and psychological development, concerning the medical treatment they undergo. The right of minors to be accompanied by their parents, guardians, custodians or other family members during treatment by the specialized or primary health care services is also recognized.

1147. Where the child's illness requires hospitalization, provision must be made for areas adapted to children, where they may enjoy the right to play and maintain links with school and family life. Children will have the right to pursue their schooling throughout their period of hospitalization, particularly in cases of prolonged illness.

1148. Whenever children are hospitalized, the principles of the European Charter for Children in Hospital will be respected.

1149. In recent years the Autonomous Communities have developed important lines of action concerning information and education for health and consumer-related issues, in some cases in the context of Health Education Plans. Many educational activities have been carried out in schools, in the fields of health, sex education, prevention of STDs and AIDS, diet and nutrition, hygiene, prevention of accidents, prevention of drug abuse, environmental sanitation, advertising and consumer-related issues.

The autonomous administrations have also produced copious educational materials for use as back-up to educational activities.

1150. Many of these activities have been conducted in collaboration with the Ministry of Health and Consumer Affairs, the aim being to develop the teaching of consumer-related issues across the curriculum.

1151. Sometimes, as in the case of the Asturian Regional Consumers' Agency, these activities have been conducted in the framework of a European Union pilot project and through Consumers' Training Centres.

1152. The Autonomous Communities run a number of programmes for ongoing training of health professionals. Specialized training centres include Public Health Centres and Health and Social Services Schools.

1153. As regards family planning, sex education and prevention of teenage pregnancies, in addition to the care provided in accordance with the Minimum Criteria for Mother and Child Care and the experimental projects conducted in schools concerning education in sexual and affective relations, some Autonomous Communities and municipalities have special centres catering for adolescents.

1154. Measures for the treatment, prevention and epidemiological monitoring of AIDS are included in the National Health System's Minimum Criteria for Mother and Child Care and in the National and Regional AIDS Plans.

C. Social security and child care services and facilities (arts. 26 and 18, para. 3)) (CRC/C/58, paras. 99-102)

1. Measures adopted by the State

1155. Article 55 of Royal Decree-Law 1/1994 of 20 June, approving the amended text of the General Social Security Act, establishes that:

> "1. The Social Security System, drawing on funds to be determined for that purpose, may provide to persons included in its scope of application and family members or assimilated dependents the services and financial assistance which are considered necessary to deal with states and situations of need; upon demonstration, save in cases of emergency, that the person concerned lacks the resources indispensable in order to cope with such states and situations. Likewise, in cases of legal separation or divorce, the spouse and descendants who would have been beneficiaries by reason of marriage or filiation shall be entitled to social assistance benefits. In cases of de facto separation, the conditions of provision of social assistance to the spouse and children of persons included in the scope of application of the Social Security System shall be determined by regulation."

1156. In section B of this chapter, chapter II and chapter III.A.4, reference was made to the right of all children to provision of health assistance under the Social Security System, which offers universal coverage free of charge.

1157. Similarly, both the initial report of Spain and the Introduction and other chapters of this second periodic report, particularly chapter V.A and B, contain references to the right of all children to have access to the Public System of Social Services, to benefits under the Concerted Plan, and, in particular, to the System of Social Care for Children in Social Difficulties of the autonomous and municipal administrations' general and special services. Under article 10 of the Protection of Minors Act (1/1996), "for the defence and guaranteeing of his or her rights, a minor may [...] request the social resources available from the public administrations".

1158. As regards other social security benefits, these are requested by, and normally granted to, the person having charge of the child, so that even when the child is being fostered by an association, foundation or public body constituted for that purpose, the fostering body will receive any social benefits to which the child may be entitled.

1159. Nonetheless, under article 10 of Act 1/1996, the minor himself, of his own motion or through his legal representative, may request and receive the benefits, when a situation of risk or desamparo has already been identified or in the case of emancipated minors.

1160. The criteria adopted by the legislation in granting social security benefits vary, depending on the benefit in question and the specific circumstances of the recipients.

(a) "Large family" benefits

1161. The regulations governing large families in Spain are basically to be found in the Protection of Large Families Act (25/1971 of 14 June), which adopts a protectionist approach. The Act defines and classifies such families by reference to the following criteria:

(a) Head of the family, spouse, and four or more children;

(b) Head of the family, spouse and three children, if one of the children is disabled or incapacitated for work;

(c) Head of the family a widow(er) or separated, legally or de facto, and three children;

(d) Head of the family and spouse, one of whom is incapacitated for work, and three children.

1162. The children must meet the following conditions: be unmarried and below 21 years of age, or below the age of 25 if engaged in studies; live with the head of the family; and be economically dependent on the head of the family.

1163. Educational benefits comprise exemption from or a reduction in academic and administrative fees and charges, and percentage reductions in railway, land, sea and air fares.

1164. Recognition of "large family" status, issuance of the corresponding certification, and regulation and provision of benefits within their geographical and administrative sphere of competence is the responsibility of the Autonomous Communities.

1165. The 1987 General State Budget extended the concept of "large family" to families with two or more children both or all of whom are disabled or incapacitated for work.

1166. The Fiscal and Administrative Measures and Social Order Act, 42/1994 of 30 December, further broadened the concept so as to include families with three or more children, regardless of any disability or incapacity for work.

1167. Lastly, Act 8/1998 of 14 April, broadening the concept of the large family, defines as such any family with two children, at least one of whom is disabled or incapacitated for work. Royal Decree

6/1999 of 8 January, broadening the concept of the large family, sets forth the implementing regulations for this Act.

(b) Parental benefits

1168. Leave. Under article 46.3 of the Workers' Statute,

"Workers shall be entitled to a period of leave not exceeding three years in order to care for each child, whether natural or adopted, from the date of its birth.

Subsequent children shall give entitlement to a new period of leave which, where applicable, shall terminate any concurrent period of parental leave to which the beneficiary may be entitled. When both the father and the mother work, only one of the two may exercise that entitlement.

The period during which the worker remains on leave within the meaning of this article shall be computable for purposes of seniority and the worker shall have the right to participate in any vocational training courses which he or she may be required by the employer to attend, particularly on the occasion of his or her return to work. During the first year the worker shall be entitled to have his or her post retained. Once that period has elapsed, the post retained shall be one in the same occupational group or in an equivalent category."

1169. Childbirth. Under article 48.4 of the Workers' Statute, as regards suspension of the employment contract,

"In the event of childbirth, the suspension shall last 16 uninterrupted weeks, extendible to 18 weeks in the event of a multiple birth.

The period of suspension shall be distributed at the choice of the woman concerned, provided that six weeks' suspension immediately follow the birth, a period of which the father may avail himself to care for the child in the event of the death of the mother.

Notwithstanding the above, where both mother and father work, the mother, at the commencement of the period of maternity leave, may elect for the father to avail himself of up to four of the last weeks of the suspension, provided that they are uninterrupted and fall at the end of the period, unless at the time of their effectiveness the mother's return to work would pose a risk to her health."

1170. Lactation. Under article 37.4 of the Worker's Statute,

"Women workers wishing to feed a child less than nine months old shall be entitled to one hour's absence from work, which may be divided into two parts. At her own wish, the woman may replace this entitlement with a reduction of one half-hour in the length of her working day for the same purpose. This leave of absence may be exercised by the mother or father without distinction in the event that both work."

1171. Initial leave for the birth of a child. Under article 37.3(b) of the Workers' Statute, the worker, following notification and substantiation, may take leave from work with an entitlement to two days' wages in the event of the birth of a child. When this involves a journey, the period permitted shall be four days.

1172. Adoption. Under article 48.4 of the Worker's Statute, with regard to the suspension of the employment contract,

"In the event of adoption, if the child adopted is less than nine months old, the suspension shall have a maximum duration of 16 weeks, starting, at the worker's choice, either from the administrative or court decision ordering the fostering, or from the court order constituting the adoption.

If the adopted child is more than nine months old and less than five years old, the suspension shall have a maximum duration of six weeks. In the event that both the father and the mother work, only one of them shall have this entitlement."

(c) Reduction in the working day for reasons of legal guardianship

1173. Under article 37.5 of the Workers' Statute,

"Those who for reasons of legal guardianship have in their direct care a child under 6 years of age or a physically or mentally disabled person who does not perform any other remunerated activity shall be entitled to a reduction in working hours, with a proportional reduction in wages, of between a minimum of one third and a maximum of one half of the duration of the working day."

(d) Orphan's benefits

1174. The beneficiaries of these benefits are the children of the deceased under 18 years of age or over that age if incapacitated at the date of the death, regardless of their filiation; children under 21 years of age (or under 23 if neither of the parents has survived) at the date of the death, when not gainfully employed or self-employed, or when their income accruing from such activity, computed on an annual basis, represents less than 75 per cent of the current annual minimum wage; and children of the surviving spouse from a previous relationship, in a marriage entered into two years prior to the death.

1175. The amount of the benefit is 20 per cent of the regulatory base, and may be increased by 45 per cent of the widow's pension where there is no surviving spouse.

(e) Dependent child benefit

1176. This benefit consists of a financial allowance granted, in respect of each child, to persons having in their charge children under 18 years of age or disabled persons over that age, whether Spaniards, citizens of the European Union, Hispano-Americans, Brazilians, Andorrans or Filipinos legally resident in Spain and earning below a specified annual income. It is also granted to children both of whose parents have died or who have been abandoned by their parents, whether or not they are being cared for under the family fostering regime.

1177. For children under 18 years of age, the annual amount will be 36,000 pesetas, or 72,000 pesetas if the child is disabled.

(f) Protection of workers against dismissal for requesting or obtaining parental leave

1178. Spanish legislation makes no express provision for nullity of a dismissal on these grounds. However, some provisions extend such protection indirectly. Articles 55.4 and 5 of the Workers' Statute refer to dismissals that are null and void or inadmissible where the grounds invoked by the employer are discriminatory or in breach of fundamental rights. Article 95 classifies breaches by the employer of regulations concerning leave as a serious offence.

1179. Furthermore, under article 52, absences on maternity leave may not be taken into account in cases of dismissal for absenteeism.

1180. A draft amendment to this article has been formulated, to cover "illness occasioned by pregnancy or childbirth".

1181. Lastly, article 26 of the Employment Risks Prevention Act provides that "when an adjustment of the conditions or hours of work is not possible, or when, in spite of such adjustment, the conditions attaching to a work post might adversely affect the health of a pregnant worker or of the foetus, [...] the worker must perform a different job or function, compatible with her condition".

1182. A draft amendment to article 26 provides for a worker to be deemed temporarily incapacitated for work when the enterprise is unable to provide her with a job compatible with pregnancy.

1183. As regards measures to ensure that children of working parents are entitled to benefit from child care services and facilities, as will again be pointed out in chapter VII, the General Education (Organization) Act, 1/1990 of 3 October, guarantees the right of infants to be educated from birth, recognizing nursery school education as the first stage of the Spanish education system. This stage comprises two cycles, the first extending to the age of three, the second continuing to the age of six. The Act also provides a child care model for the educational needs of infants and the social needs of the family, and guarantees the right of children under the age of six to receive quality care, requiring State and private schools to comply with certain minimum requirements.

1184. Nonetheless, this stage of education is not compulsory. Currently, the state of services is such that 99.8 per cent of children aged four and five can be enrolled in educational establishments; and an estimated 55.9 per cent of three-year-olds are enrolled.

1185. First-cycle establishments (0-3 years) are more diversified. Indeed, diversity is the keynote, as regards hours, quality of care, types of service offered and the types of establishment providing them. Although most services for this age-group are provided by the private sector, there is also a public network of centres and services, although it is not available entirely free of charge. Funding is usually mixed, with service users also required to contribute. Each Autonomous Community regulates access to these services and sets the contributions that users must pay. The criteria for admission to publicly funded establishments are based principally on family income, although account is also taken of other circumstances, such as the fact that both parents work. In some municipalities there are municipally-run crèches and nursery schools.

Establishment of public nursery care services

1186. Since 1990 the Ministry of Labour and Social Services has allocated a General State Budget line to increasing provision of services to infants (0-3 years), thereby promoting application of the General Education (Organization) Act (1/1990) in the area of nursery school education by organizing existing resources, extending provision of services and enhancing the compatibility of family life with the world of work.

1187. The 1992 Council of the European Communities Recommendation on child care considers a key element in compatibility between family life and the world of work to be the existence of high-quality socio-educational services to provide care for young children while their parents are at work.

1188. Funding is provided through agreements with the Autonomous Communities, on the understanding that the Autonomous Community and the Local Corporation providing the service must together contribute at least 50 per cent of the funding.

1189. In 1997, 209 such projects were co-financed, in a total amount of 1,981,836,868 pesetas, 650 million of which were contributed by the Ministry of Labour and Social Affairs and the remainder by the Autonomous Communities and Local Corporations.

1190. These services must meet a series of criteria agreed on in the Sectoral Conference on Social Affairs. They must:

(a) Be newly established (or maintain services established under this programme). "New" services also include existing services extended for the following reasons:

(i) An increase in the number of hours;

(ii) An increase in the number of places;

(iii) Extension of the age group to include children aged 0-3;

(iv) Conversion of temporary services into permanent services;

(b) Be located in socially disadvantaged or newly constructed peripheral urban areas;

(c) Assist in the settlement of rural populations;

(d) Be implemented in areas of high demographic growth.

1191. This measure involves the following actions:

(a) Financial support from the local administrations for the creation and maintenance of new nursery care services;

(b) Coordination with the Autonomous Communities to monitor programmes through the Inter-Autonomous Technical Commissions, with the participation of the Ministry of Education and Science;

(c) Technical support for staff working in nursery care services.

1192. Care services for children aged 0-3 years managed by NGOs are also promoted.

1193. This measure is implemented through programmes conducted by non-profit-making NGOs through subsidies derived from income tax revenue; its objectives are to cooperate with families in the education of their children, encourage the creation of innovative high-quality services, and promote the compatibility of family life with the world of work.

1194. The programmes subsidized must conform to one of the following models. They must be:

(a) Either, an all-day service offering meals, for children of working parents;

(b) Or, a service not offering meals, complementing care in the family;

(c) Or, a multi-purpose play centre for children of all ages, able to provide temporary care, in a segregated area, for children under 3 years of age;

(d) Or, educational care services for children and families in rural and remote areas, provided in the home and supported by occasional meetings, including meetings at work.

1195. The requirements are as follows:

(a) The all-day service offering meals must be open for at least seven hours a day, five days a week;

(b) The services not offering meals and complementing care in the family must offer care facilities for children for at least three hours a day and engage in educational activities with their families for at least three hours a week;

(c) The services must be provided in socially disadvantaged and newly constructed peripheral urban districts, or in rural areas;

(d) The staff providing the service must have qualifications appropriate to the care model provided;

(e) The services must include an education project and involve participation by the parents;

(f) In the case of the all-day service offering meals, the maximum number of children per teacher must be:

Age 0-1 year: 8 children;

Age 1-2 years: 12 children;

Age 2-3 years: 16 children.

(g) There must be a properly equipped area of at least 2 square metres per child.

Programme to subsidize crèches in the workplace

1196. This programme is intended to subsidize non-profit-making crèches providing educational care to the children under 6 years of age of self-employed and employed women who have no family members to look after their children.

1197. Since 1984 the appropriation in the General State Budget to finance this type of crèche has been transferred to the Autonomous Communities, to enable them to distribute it to the crèches in their territory. The annual appropriation for 1997 and 1998 was 1,100 million pesetas, to be distributed on the basis of the numbers of children under 6 years of age and of working women.

1198. In 1996, 449 crèches, providing a total of 30,723 places, were subsidized.

D. Standard of living (art. 27, paras. 1-3)
(CRC/C/58, paras. 103-104)

1. Measures adopted by the State

1199. Article 11 of the Protection of Minors Act (1/1996 of 15 January) establishes the guiding principles of administrative action to ensure an adequate standard of living for children and their full development, through guarantees of their rights, proclaiming that

> "The Public Administrations shall extend appropriate assistance to ensure the exercise of their rights by minors.
>
> The Public Administrations, in their own spheres of competence, shall formulate comprehensive policies to secure children's development through the appropriate means, and particularly as regards the rights enumerated in this Act. Minors have the right of access to such services on their own account or through their parents or guardians or institutions in an equivalent position, who, in turn, have the duty to use them to the benefit of the minors.
>
> Compensatory policies shall be promoted, with a view to correcting social inequalities. In no case shall the essential content of the minor's rights be adversely affected by a lack of basic social resources.
>
> The Public Administrations must take into account the needs of the minor in exercising their powers, especially in matters of control over food products, consumer matters, housing, education, sanitation, culture, sport, entertainment, the media, transport and public spaces in towns.
>
> The Public Administrations shall, in particular, ensure adequate regulation and supervision of those spaces, centres and services in which children customarily congregate, both as regards their physical and environmental conditions and as regards hygiene, sanitation and human resources, education projects devoted to them, participation by minors and other conditions contributing to ensuring their rights."

1200. Similarly, the protection measures referred to in chapters IV and V of this report, the guarantee of the right to health and the health and social security benefits that ensure it referred to in sections A, B and C of this chapter, the right to education, dealt with in chapter VII, and the protection measures referred to in chapter VIII, all ultimately contribute to guaranteeing the right of children to an adequate standard of living.

2. Measures adopted by the Autonomous Communities

1201. The Social Services Acts promulgated by the Autonomous Communities, the autonomous legislation specifically covering children, and the benefits provided by the network of general municipal social services, and by the education and health services in the case of those Autonomous Communities to which those powers have been transferred, also contribute to guaranteeing the right of children to an adequate standard of living.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES
(arts. 28, 29 and 31)

A. Education, including vocational training and guidance (art. 28)
(CRC/C/58, paras. 109-111)

1. Measures adopted by the State

(a) The Spanish Constitution

1202. Article 27, paragraph 1 of the Spanish Constitution proclaims the right of everyone to education. Paragraph 4 of the same article provides that "Elementary education is compulsory and free."

1203. Paragraph 5 provides that "The public authorities guarantee the right of everyone to education, through general planning of education, with the effective participation of all parties concerned and the setting up of teaching establishments." In short, this constitutional provision requires the public authorities to establish a "general planning" of education at all levels.

(b) The Right to Education (Organization) Act, 8/1985 of 3 July

1204. Article 1 of this Act proclaims that all Spaniards "have the right to an elementary education that enables them to develop their own personalities. [...] This education shall be compulsory and free at the level of General Elementary Education and, where applicable, in first-grade Vocational Training, as well as at other levels to be established by law."

1205. Article 6 establishes the following rights of pupils:

(a) The right to receive an education that ensures the full development of the personality;

(b) The right to have their scholastic performance assessed on the basis of fully objective criteria;

(c) The right to respect for their freedom of conscience, and for their religious and moral convictions;

(d) The right to respect for their personal integrity and dignity;

(e) The right to participate in the functioning and life of the school;

(f) The right to receive educational and vocational guidance;

(g) The right to receive the necessary aid to compensate for any family, economic or socio-cultural disadvantages;

(h) The right to social protection in cases of family misfortune or accident.

1206. As regards equality of opportunities in the exercise of the right to education, the Spanish education system reflects the development of an educational policy designed to offer all children the same opportunities of access to education. The preamble to Act 8/1985 proclaims that "It is for the State and the Autonomous Communities, through the general planning of education, to ensure coverage of educational needs, providing an adequate supply of school places [...] and promoting equality of opportunities".

1207. The preamble goes on to proclaim "the equality of all Spaniards before the essential content" of the right to education, requiring the educational authorities to establish minimum contents of the curriculum in order to ensure a common basic education.

1208. Paragraph 2 of article 27 of this Act requires the State and the Autonomous Communities to define priority needs in educational matters, to fix targets for action and to determine the resources necessary, in accordance with the general economic planning of the State.

1209. To achieve these ends, a Conference of Educational Advisors is established, bringing together educational advisors from the Autonomous Communities and representatives of the Ministry of Education. This Conference is chaired by the head of the Ministerial Department. Article 28 of the Act provides that the Conference shall meet "as often as is necessary to ensure coordination of educational policy and exchanges of information". In addition, the Conference must be convened prior to any deliberations by the State Council on Schools.

1210. As regards the powers of the Autonomous Communities, article 19 of Organizational Act 9/1992 of 23 December, transferring powers to Autonomous Communities that have acceded to self-government pursuant to article 143 of the Constitution, states that:

> "The power to develop and implement legislation in the field of education, concerning its full scope, at all its levels and grades, and in all its modalities and specialities, is hereby transferred to the Autonomous Communities of Asturias, Cantabria, La Rioja, the Region of Murcia, Aragón, Castile-La Mancha, Extremadura, the Balearics, Madrid and Castile and León [...]".

Its article 20 provides that:

> "Powers over education shall be exercised in accordance with the following conditions:
>
> (a) the Autonomous Communities shall provide the State Administration with any information it may request concerning the various aspects of the functioning of the education system, both qualitative and quantitative. The State Administration shall make available to the Autonomous Communities the general information it prepares on the various aspects of the functioning of the education system;
>
> (b) new establishments shall be set up and new courses of study introduced in accordance with general planning criteria agreed at the Sectoral Conference on Education;
>
> (c) the national education system shall be monitored and evaluated by the State Administration, with the assistance of the Autonomous Communities, as a basis for the establishment of mechanisms to guarantee uniform and effective provision of the public service of education, enabling any inequalities and imbalances that may arise in its provision to be rectified;
>
> (d) common mechanisms or principles of action shall be adopted with the participation of the Autonomous Communities, at the Sectoral Conference on Education."

(c) The General Education (Organization) Act (1/1990 of 3 October)

1211. This Act provides that elementary education is compulsory and free, and specifies, in paragraph 1 of its article 5, the content of that "elementary education", which comprises ten years' schooling from the ages of 6 to 16.

1212. In Spain, not only primary education, but also the first four years of secondary education, are compulsory and free.

1213. The term "curriculum" encompasses the overall objectives, content, teaching methods and criteria for assessment at each of the levels, stages, cycles, grades and practical regulatory modalities that constitute the education system.

1214. The legislative texts regulating the various curricula are the following: Royal Decree 1330/1991 of 6 September, establishing the basic aspects of the nursery school curriculum; Royal Decree 1007/1991 of 14 June, establishing the minimum educational content of compulsory secondary education; Royal Decree 1700/1991 of 29 November, establishing the structure of the baccalaureate; Royal Decree 1178/1992 of 2 October, establishing the minimum educational content of the baccalaureate; and Royal Decree 676/1993 of 7 May, establishing general guidelines concerning professional qualifications and the minimum educational content of vocational training.

(d) The Legal Protection of Minors (Organization) Act, 1/1996 of 15 January, partially amending the Civil Code and the Civil Proceedings Act

1215. As already stated elsewhere in this report, article 3 of this Act establishes that minors shall enjoy in Spain the rights proclaimed in the Convention on the Rights of the Child, which shall constitute the benchmark for realization of the rights of children guaranteed under the Spanish legal system.

1216. As regards regular attendance at school, article 13 of the Act provides that

> "[...] any person or authority aware that a minor is not enrolled in or, without good reason, does not regularly attend school during the period of compulsory schooling must inform the competent public authorities, who shall then adopt the necessary measures to ensure the minor's attendance."

1217. With regard to foreign minors, paragraph 3 of article 10 of the Act establishes that "Foreign minors in Spain have the right to education". This provision does not specify the legal status of minors for purposes of enjoyment of the right to education, but proclaims it as a general right of all foreigners, thereby eliminating the limitation imposed by paragraph 3 of article 1 of Organizational Act 8/1985, which extends the rights guaranteed in paragraphs 1 and 2 of that article to foreigners resident in Spain. Previously, that limitation of the exercise of the right to education to "residents" had resulted in a de facto situation whereby, although all foreign minors attended school, only those legally resident in Spain gained academic qualifications.

1218. In addition, article 12 of Royal Decree 155/1996 of 2 February, approving the Implementing Regulations of the Rights and Freedoms of Foreigners in Spain (Organization) Act (7/1985), establishes that foreign minors on Spanish soil shall enjoy the rights recognized in the Convention on the Rights of the Child. As regards the right to education, it provides that foreign minors shall be covered by the Spanish education system, and specifically by the Right to Education (Organization) Act. Full enjoyment by foreign minors of the right to education is thus ensured, since it cannot be restricted on the grounds of the minors' or their parents' unlawful residence in Spain.

1219. Under article 7 of the Royal Decree, "Foreigners shall have the right to education and freedom of education, as well as the right to set up and run teaching establishments, having regard to the requirements of the legislation regulating these matters and to the provisions contained in international treaties to which Spain is a party, or, where none is applicable, having regard to the principle of reciprocity."

(e) Other regulations

1220. The regulations also emphasize the need for protection of minors both in and out of school.

1221. Royal Decree 732/1995 of 5 May, establishing the rights and obligations of pupils and the internal rules governing social behaviour in schools, provides for equality of rights of all pupils, "without distinction other than as to their age and to the subjects they are studying". The educational administration and the governing bodies of the educational establishments are entrusted with responsibility for ensuring respect for the rights of pupils.

1222. Within the school, the School Council is the body competent to ensure proper exercise of the rights and obligations of pupils. For that purpose, a Committee on Social Behaviour is to be set up, consisting of representatives of teachers, parents and pupils, elected by their respective sectors. The Royal Decree provides a full enumeration of the rights of pupils. Those contained in article 17 may be singled out: "All pupils have the right to respect for their physical and moral integrity and their personal dignity, and may in no circumstances be subjected to humiliating or degrading treatment."

1223. There are guarantees against discrimination on grounds of birth, race, sex, economic capacity, social status, political, moral or religious belief, physical, sensory or mental disability, or any other personal or social condition or circumstance. The adoption of educational measures to ensure integration and provision of special education is also guaranteed. The rights to information, to freedom of expression, and to contest educational decisions concerning them are also guaranteed, as is freedom of association, with recognition of the right to create associations, federations and confederations of pupils and to establish cooperatives.

(f) International commitments

1224. The Spanish State's international commitments in the area of education emphasize the right to education set forth in its internal law:

(a) The UNESCO Convention Against Discrimination in Education, of 14 December 1960, to which Spain has been a party since 20 August 1969, which, inter alia, singles out defence of the principle of non-discrimination in respect for the right to education;

(b) The ILO Paid Educational Leave Convention (No. 140), of 24 June 1974, which has been in force in Spain since 18 September 1979, of relevance to young people between 16 and 18 years of age who have entered the labour market, and which recalls the need for the State party's policies to favour the continuing education of employees. As already mentioned in chapter IV.G of this report, article 8 of that Convention provides that paid educational leave must not be denied to employees on grounds of race, colour, sex, religion, political opinion, national descent or social origin;

(c) Spain's instrument of ratification of the International Covenant on Economic, Social and Cultural Rights, concluded in New York on 19 December 1966. Under article 13 of the Covenant,

> "The States Parties to the present Covenant recognize the right of everyone to education. [...] Primary education shall be compulsory and available free to all; secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all, [...] by every appropriate means, and in particular by the progressive introduction of free education.";

(d) In the regional context of the Council of Europe, the following should be singled out: the European Agreement on Travel by Young Persons on Collective Passports between the Member Countries of the Council of Europe, concluded in Paris on 16 December 1961, which entered into force for Spain on 18 June 1982; and the European Agreement on Continued Payment of Scholarships to Students Studying Abroad, concluded in Paris on 12 December 1969 and in force for Spain since 20 April 1975. The latter Agreement was concluded in the belief that the continuation of studies in a country different to that of origin contributes significantly to young students' cultural and academic enrichment.

(g) Use of autonomous languages

1225. The use of different languages in the territory of Spain is a constitutional right: article 3 of the Spanish Constitution, while establishing Castilian Spanish as the official language of the Spanish State and declaring that "all Spaniards have the duty to know it and the right to use it", guarantees, in its paragraph 2, that "The other languages of Spain shall also be official in their respective Autonomous Communities in accordance with their statutes."

1226. Pursuant to these constitutional provisions, the Statutes of Autonomy of territories where languages other than Castilian Spanish are also in use have recognized the right to use them.

1227. National legislation and that of the Autonomous Communities have had to comply with the provisions of the Spanish Constitution and of the Statutes of Autonomy respectively, so that all subsequent legislation must respect the principles laid down concerning the right to use and learn the different languages of Spain. That is the line taken by the Spanish Constitutional Court, which has found that articles 3.1 and 2 of the Spanish Constitution and the corresponding articles of the various Statutes of Autonomy are the basis for regulation of linguistic pluralism as regards its effects on the Spanish constitutional order at official level. Where national legislation on education is concerned, it is interesting to note article 1.1(e) of the General Education (Organization) Act, which includes among the objectives of education "training in respect for Spain's linguistic and cultural pluralism".

(h) Children with special educational needs

1228. As regards children with special educational needs or in difficult circumstances, they too have the right to education guaranteed by article 27 of the Constitution. In addition, article 49 of the Constitution commits the public authorities to carrying out "a policy of preventive care, treatment, rehabilitation and integration of the physically and mentally disabled and those with sensory disabilities, providing them with the specialized care that they require, and affording them special protection in order that they may enjoy the rights conferred by this Title on all citizens".

1229. The provisions of the General Education (Organization) Act (1/1990) that regulate education for children with special needs establish the principles and measures applicable in such cases. The Act embodies the principles introduced by the legislation on the rights of the disabled, and, in particular, by the Act on the Social Integration of the Disabled (13/1982 of 7 April), discussed in chapter VI, establishing that the educational system shall be provided with the necessary resources to ensure that pupils with special educational needs can achieve the general objectives set for other pupils.

1230. The principles and measures applicable to children with special educational needs contained in Act 1/1990 are further developed in a wealth of specific provisions. These cover the teacher/pupil ratio by type of special need, the type of special educator required, and the modality for schooling; the functioning of guidance services in the special schools; the structure and functioning of the child guidance and educational support teams; and the functioning of special education and the various services. They guarantee educational continuity in compulsory secondary education and adjustments to ensure that pupils with special educational needs can take university entrance examinations. Special vocational training and the special Social Guarantee Programmes are also expanded, and programmes dealing with the transition to adult and working life are introduced, targeted on pupils with severe and permanent deficiencies. For the first time, the needs of exceptionally gifted pupils are addressed. Pupils with special educational needs can be catered for either in special or in ordinary schools. Assistance for such children (whether temporary or permanent) must be provided in the most normal context possible, although the most seriously affected pupils may attend special schools. In rural areas, special facilities for these pupils may be provided in ordinary schools in certain specified circumstances. Specific special education centres also exist for pupils with special educational needs associated with specific forms of disability.

1231. Royal Decree 696/1995 of 24 April, on the education of pupils with special educational needs, which superseded Royal Decree 334/1985, regulates "the conditions for provision of educational care to pupils with temporary or permanent needs associated with their educational and academic history or attributable to personal characteristics of exceptional talent or mental, motor or sensory disability". Special educational care starts as soon as the existence or risk of deficiencies or incapacities is detected, regardless of the child's age. Pupils with temporary or permanent special educational needs are placed in ordinary schools and courses, with professional and material support to ensure that they are catered for effectively. Only when it is considered that the child's needs cannot be adequately catered for in an ordinary school is he or she enrolled in a special school.

1232. Broadly speaking, the special schools provide pupils with an elementary (primary and compulsory secondary) education and with training to assist in the transition to adult life. The schools also offer Social Guarantee Programmes for pupils with special educational needs. Thus, any such pupils who complete their elementary education without achieving the targets of compulsory secondary education may continue their schooling by taking various types of vocational training course.

1233. Throughout their schooling, the educational authority is responsible for the various proposals made and decisions taken concerning these pupils' education, and for identification of those requiring additional support measures. It is for the Schools Commissions, after hearing the parents or guardians and having regard to the level of disability or giftedness evidenced in the report of the child guidance and educational support team, to take measures enabling them to be placed in ordinary schools with appropriate physical, technical and professional resources. These teams, made up of professionals qualified in various fields, draw up a programme of action in response to each individual pupil's special educational needs, taking account of each pupil's circumstances and characteristics and those of his or her family and school environment.

1234. When integrated into ordinary schools, pupils with special educational needs require adjustments to their curriculum.

1235. Some of these adjustments will concern access to the curriculum (changes or provision of special resources to ensure that pupils in this category can follow the ordinary curriculum or, where applicable, the adjusted curriculum). Others are adaptations of the curriculum in the true sense (changes in classroom programming concerning objectives, content, methodology, activities, criteria and assessment procedures to cater for individual differences). These latter adjustments fall into two groups: significant, where they involve dropping some basic subjects from the official curriculum; and insignificant, when they do not affect the basic teaching. Diversification of the curriculum can be seen as an extreme form of curriculum adjustment, for pupils with the most severe learning difficulties associated with serious permanent deficiencies, for whom some areas of the curriculum, particularly at the compulsory secondary stage but also earlier, may be of little practical value. Exemption from such courses, which are compulsory under the legislation in force, makes it possible to focus on those areas that constitute a relevant and practical curriculum for pupils with such needs. The programmes are implemented for pupils over 16 years of age, following a psychological and educational assessment, consultation with the pupils and their parents, and a report by the Education Inspectorate. It is also possible for pupils with serious auditory, visual or motor problems to be exempted from certain subjects in the baccalaureate, in exceptional circumstances and upon due certification.

1236. The teaching teams will include staff with expertise in special education, divided into early guidance, general and specialized teams.

1237. Royal Decree 969/1986 of 11 April established the National Centre for Special Education Resources. The Centre is attached to the Ministry of Education and divided into three areas: visual, auditory and speech deficiencies; motor deficiencies; and mental deficiencies and developmental disorders.

1238. The Ministry of Education and Culture promotes plans for vocational guidance and labour market insertion of young people with special educational needs, establishing agreements with other administrations, local corporations and public and private non-profit-making institutions, with a view to achieving the best possible liaison between these training modalities and the world of work through the promotion of appropriate actions and measures, with emphasis on the role that protected workplaces and vocational centres can play in the effective integration of such pupils in the labour market.

(i) Compensating for educational inequalities

1239. The basis for such compensatory educational activities is application of the principle of equality of opportunity. This principle implies that, in order for certain pupils' initial social or cultural disadvantages or inequalities not to develop into educational inequalities, a series of positive compensatory measures must be put in place.

1240. The legal basis for compensatory education in Spain is the Spanish Constitution, which, as previously indicated, confers the basic social right to education on all Spaniards and entrusts the public authorities with the task of promoting the conditions for and removing the obstacles to its enjoyment by all citizens.

1241. To that end, Royal Decree 1174/1983 of 27 April, on compensatory education, put in place a series of initiatives intended to improve educational access and attendance by certain disadvantaged persons and groups.

1242. Subsequently, the Right to Education (Organization) Act, 8/1985 of 3 July, conferred that right on all Spaniards and foreigners resident in Spain, without exception on social or economic grounds or on grounds of their residence status.

1243. Lastly, the General Education (Organization) Act (1/1990 of 3 October), which establishes continuing education as a basic principle of the education system and accords it an essential role in the development of individuals and society inasmuch as education enables progress to be made in the fight against discrimination and inequalities, introduced important changes as regards the scope and organization of the subjects taught, which must themselves act as a preventive and compensatory social and educational mechanism. Its Title V is devoted to compensation for inequalities, establishing the guiding principles and priorities of compensatory education, through the adoption of positive discrimination with a view to achieving effective realization of the principle of equality in the exercise of the right to education.

1244. These compensatory measures and actions are intended to prevent and rectify inequalities affecting pupils' access to education and their attendance and advancement, resulting from social, economic, cultural, geographical, ethnic or other factors, by intensifying the ordinary measures available to the system and promoting other, extraordinary, measures.

1245. Broadly speaking, compensatory measures are targeted on disadvantaged persons, groups and geographical areas. Specifically, the priority targets are:

(a) Pupils who, because of geographical or social factors, suffer disadvantages affecting their access, attendance or advancement;

(b) Socially disadvantaged pupils from ethnic and/or cultural minorities experiencing difficulties affecting their access, attendance or advancement;

(c) Pupils who, for personal, family or social reasons, are unable to pursue a normal process of schooling, where their situation may result in difficulties affecting their access, attendance or advancement.

i. Compensatory education in vocational centres

1246. Formerly, the vocational centres catered for groups of students at the Elementary General Education (higher cycle) and Vocational Training levels who were lagging significantly behind and were in danger of dropping out of school.

1247. The aims of compensatory education continue to be promotion of centralized plans to avoid premature dropping out; establishing preventive and/or remedial measures for those lagging seriously behind, targeted on the 14-16 age group; proposing methodological strategies and curricular components acknowledging students' needs and motivations; and promoting a proper relationship between students and their social, family and school environment, offering them a better preparation for their future integration into adult working life.

1248. In extending compulsory schooling to the age of 16, the General Education (Organization) Act (1/1990 of 3 October), in addition to making the curriculum more flexible and some subjects optional, provides for two forms of compensatory measures:

(a) Diversification of the curriculum;

(b) Social Guarantee Programmes.

1249. The role previously played by the vocational classes has now been assigned to the various modalities adopted under the Social Guarantee Programmes - both those implemented through the secondary school curriculum, and those implemented in cooperation with other bodies and associations outside that framework.

1250. Compensatory education in vocational classes includes the following measures:

(a) Vocational workshops offering a more practically oriented education, more closely reflecting pupils' socio-educational context;

(b) Establishment of appropriate pastoral care catering more for pupils as individuals;

(c) Organization of the curriculum around basic technical skills coordinated with the activities of the workshops.

ii. Compensatory education for cultural minorities

1251. In this area, the compensatory activities conducted in schools are intended to assist in the integration in school and society of disadvantaged pupils from ethnic and/or cultural minorities, experiencing difficulties affecting their access to the education system, attendance and advancement.

1252. These activities also extend to those immigrant students who, either because of language difficulties or because they are lagging behind academically, need educational support to assist in their integration in school.

1253. Priority is given to compensatory activities in those primary and compulsory secondary schools with the largest numbers of pupils from these disadvantaged sectors.

1254. Compensatory education for this population group has various specific objectives:

(a) Promotion of equal opportunities for access, attendance and advancement for pupils from the most disadvantaged socio-cultural groups, using measures to effectively redress the initial inequalities;

(b) Facilitating the socio-educational inclusion and integration of all pupils, counteracting processes of social exclusion;

(c) Developing communication and respect among all pupils, irrespective of their cultural, linguistic and ethnic origin, capitalizing on the potential for enrichment offered by the various cultures and developing those areas relating to the maintenance and dissemination of minority groups' own languages and cultures;

(d) Encouraging participation by all sectors of the educational community and other sectors of society so as to secure effective access to education and facilitate the incorporation and social integration of families from other cultures and those experiencing special social difficulties.

1255. This measure is implemented by means of the following actions:

(a) Provision of places for these pupils in the second cycle of nursery school education;

(b) Enrolment and balanced distribution of these pupils among all publicly funded schools throughout their period of compulsory schooling;

(c) Provision of additional human resources, financial and material support for publicly funded schools at primary and compulsory secondary levels;

(d) Development of programmes to monitor and control truancy;

(e) Formulation and implementation of continuing education plans for all teachers in schools, and of specific training activities for teachers participating in remedial projects in schools;

(f) Preparation and dissemination of curriculum materials to deal with discriminatory stereotypes, especially as regards different cultures, racism and xenophobia;

(g) Measures to promote the systematic acquisition of the language of the host country and to encourage pilot schemes for maintaining and disseminating minority groups' own languages and cultures, and/or those of their countries of origin in the case of immigrant pupils.

(h) Collaboration, through specific subsidies, with parents' associations and non-governmental associations and organizations, to develop compensatory activities to supplement those carried out in schools.

iii. Compensatory education for the travelling population

1256. These measures target pupils who, because their families are constantly or temporarily on the move, cannot attend a school regularly.

1257. The measures are chiefly aimed at children of families working in circuses and travelling shows or engaged in seasonal work, and are intended to ensure that the children receive an education throughout the period in which they are travelling; to secure coordination between the various schools attended by children of seasonal workers in the course of an academic year and the reference schools at which they are registered; and to provide them with an education appropriate to the characteristics and circumstances of the itinerant population.

1258. This measure is implemented by means of the following actions:

(a) Enrolment of pupils of compulsory school age in the "distance learning" modality if they are constantly on the move throughout the school year;

(b) Assignment of teachers to the centres catering for casual workers during the harvest season;

(c) Awards of scholarships and aid to cover costs of accommodation, teaching materials etc., for pupils pursuing courses of study away from home;

(d) Provision of peripatetic educational support units for pupils of compulsory school age who are on the move permanently (children from circuses), or for extended periods during the school year (some seasonal workers);

(e) Special training for teachers of pupils in this category.

iv. Compensatory education for children in hospital

1259. This measure includes compensatory actions for pupils who, because of hospitalization or prolonged convalescence at home, are prevented for some considerable period of time from pursuing their education at the school in which they are enrolled. It seeks to ensure the greatest possible continuity in the hospitalized pupil's education and to promote coordination between the classes in hospital and the pupil's reference school.

1260. These measures are implemented, in collaboration with the Health Administration, in those hospitals that regularly treat a sufficient number of patients of compulsory school age.

1261. Nonetheless, hospitalized pupils continue to be enrolled at the ordinary school where they were previously registered. Only in cases of very protracted convalescence in the home will they be registered with the "distance learning" modality.

1262. This measure is implemented by means of the following actions:

(a) Provision of human and financial resources to ensure the functioning of classes in hospitals that have a permanent paediatric service and a sufficient number of patients of compulsory school age;

(b) Establishment of home care programmes, in collaboration with non-profit-making associations and bodies;

(c) Adaptation of teaching programmes to hospital conditions: adjustment of methods and activities, flexible timetables, self-expression and relational activities, workshops and recreational activities.

v. Compensatory education in rural areas

1263. The entry into force of the General Education (Organization) Act brought about an intensification of action to compensate for the disadvantages of schools that, because they are located in remote rural areas, are unable to achieve the minimum educational standards required by the Act.

1264. Compensatory educational activities in rural areas focus on those areas in which, because of low rates of enrolment, schools cannot offer a complete cycle of compulsory and pre-compulsory education. Such activities are implemented in virtually all rural areas, providing support for small schools unable to offer a full course of studies.

1265. The measure seeks to offset disadvantages such as isolation, the need to group together pupils from several or all levels, shortages of material resources and restricted teacher mobility.

1266. Until 1994 it was the responsibility of the Resources and Support Services Centres, which conducted a variety of activities in response to each individual area's identified needs.

1267. The Rural Educational Innovation Centres provide back-up for the support provided by the Resources and Support Services Centres, in areas such as socialization and broadening of the curriculum. They are principally targeted on pupils in the 12-14 age group.

1268. The measure seeks to achieve the following objectives:

(a) Guaranteeing enjoyment of the right to education by children in rural areas;

(b) Compensating for disadvantages attributable to the specific characteristics of rural areas;

(c) Improving the infrastructure of facilities;

(d) Reducing the isolation of schools and teachers;

(e) Finding organizational and teaching models adapted to the rural environment;

(f) Providing pre-school education in an out-of-school context;

(g) Conducting specific programmes in response to any educational shortfalls detected.

1269. This measure is implemented by means of the following actions:

(a) Support provided by the Resources and Support Services Centres. This action was discontinued in 1994. The functions with which the Resources and Support Services Centres were entrusted included provision of theoretical, practical and technical assistance to schools which, because of their size, lacked the material and human resources needed to carry out their educational activities.

(b) Support by the Rural Educational Innovation Centres. These activities include:

- (i) Curriculum activities supplementing areas of the syllabus that the school cannot cover without assistance (physical education, laboratory work, languages, pre-technology, etc.);
- (ii) Workshop activities: self-expression, environmental studies, music, etc.;
- (iii) Extra-curricular activities: film shows, debates, excursions, sport, etc.

(c) Out-of-school activities to support children of pre-school age. These activities include:

- (i) Preparation and/or selection of educational materials, organization of care, resources, appropriate methodology, etc.;
- (ii) Personal attention for pupils, once or twice a week;
- (iii) Meetings or individual contact with parents, occasionally including provision of materials they can use in covering some aspects of the syllabus with their children;
- (iv) In some provinces, these resources and materials are given to teachers of nursery school pupils, especially those not qualified in this field who require support.

With the creation of the Community Rural Colleges, this programme is being phased out in many areas.

(d) Creation and gradual introduction of Rural Community Colleges in rural areas. The creation of the Rural Community Colleges represents a new attempt to compensate for the deficiencies of rural schools by amalgamating small schools into larger centres where subjects can be taught by a new category of specialist peripatetic teachers. This system obviates the need for pupils to travel to school every day; instead it is the teachers who travel, which has the advantage that children do not need to be removed from their everyday environment. The growing number of Rural Community Colleges means that they are increasingly taking over the role previously played by the Resources and Support Services Centres.

1270. See also chapter III.A of this report.

(j) Choice of school

1271. A Ministerial Order of 26 March 1997 regulates the procedure for choosing a school and admission of pupils to publicly funded nursery, primary and secondary educational establishments located in the territorial jurisdiction of the Ministry of Education and Culture. Admission to publicly funded schools is governed by two sets of criteria: priority and supplementary.

1272. The priority criteria are:

(a) Annual family income;

(b) Proximity to home;

(c) Siblings attending the same school.

The supplementary criteria are:

(a) Family belonging to the "large family" category;

(b) Parents, siblings or guardian certified as physically or mentally disabled or suffering from a sensory disability;

(c) Any other circumstance deemed relevant by the competent body of the school in accordance with objective criteria that must be made public by the school prior to the admission process.

The Enrolment Committees must adopt the necessary measures to facilitate the enrolment of pupils with special educational needs associated with circumstances of social or cultural disadvantage. Such pupils must always be equitably distributed among publicly funded schools so as to favour their integration, avoiding extremes of concentration or dispersal, in accordance with the provisions of Royal Decree 299/1996 of 28 February, regulating measures to compensate for educational inequalities.

(k) Quality in the education system

1273. As regards monitoring and inspection of the education system, the General Education (Organization) Act (1/1990) requires the public authorities to accord priority attention to factors affecting the quality of education.

1274. Among other measures, attention must be accorded to the qualifications and training of teachers, to educational innovation and research, to educational and vocational guidance and to inspection of schools. Training and continuing training of teachers are proclaimed as a right and an obligation respectively. Article 56 of Act 1/1990 also establishes the responsibility of the education authorities and of schools to ensure such continuing training.

1275. To guarantee the exercise of that right and compliance with that obligation, teachers are required to undertake various activities to ensure that their knowledge and skills remain up-to-date. Royal Decree 294/1992 of 27 March, regulating the creation and functioning of teacher training centres, was enacted to implement these objectives. This Decree supersedes the previous regulations on this matter, contained in Royal Decree 2112/84 of 14 November. Article 1 of the new Decree proclaims teacher training centres to be "prime instruments for the continuing training of teaching staff in the general and special regimes of education".

1276. The provisions of the General Education (Organization) Act (1/1990) concerning evaluation of the education system seek to ensure that the system invariably responds to social demands and educational needs and is applied to students, teachers, schools, to educational processes and to the administration itself, as provided for in paragraph 1 of article 62. To ensure that general evaluation of the system is conducted effectively, with due regard to all significant issues, and with the primary objective of guaranteeing students the best available education, paragraph 3 of article 62 of the Act establishes the National Institute of Quality and Evaluation, as "the organ of the General Administration of the State responsible for general evaluation of the education system". The organization and functioning of this body are regulated by Royal Decree 928/1993 of 18 June.

(l) Nursery education

1277. Royal Decree 1333/1991 of 6 September, establishing the curriculum for nursery school education, develops the provisions of paragraph 2 of article 4 of Act 1/1990 in this area and incorporates the provisions of Royal Decree 1330/1991 of 6 September, establishing the basis for the nursery school curriculum. Programming by nursery school teachers "shall include, where appropriate, adaptations to the curriculum for students with special educational needs" (art. 10).

1278. Nursery school education, for pupils below 6 years of age, is voluntary in Spain, but the General Education (Organization) Act requires administrations to provide a sufficient number of places to ensure that all requests for enrolment can be met. It is divided into two cycles. The first caters for children up to the age of three, the second for those up to the age of six. Article 10 of the Act requires nursery school education to be dispensed "by teachers with the appropriate special qualifications". In addition, in the first cycle, given that the children are below three years of age, other suitably qualified professionals must be available to ensure that their needs are fully catered for. The aim of nursery school education is to develop capacities in the children commensurate with their age, encouraging their integration in the natural, family and social environment.

(m) Primary education

1279. Under article 8 of Royal Decree 1344/1991 of 6 September, establishing the curriculum for primary education,

> "1. Schools shall implement and supplement the primary education curriculum by drawing up curriculum projects for each stage, whose objectives, contents, methodology and assessment criteria reflect the needs of pupils.
>
> 2. The curriculum projects for each stage shall ensure that the general objectives of the stage reflect the socio-economic and cultural context of the school and the characteristics of the pupils as a body, general methodological criteria and decisions concerning the assessment process."

1280. Primary education comprises six academic years, from ages 6 to 12, and forms part of compulsory free elementary education. The objectives of this level, set forth in article 12 of the General Education (Organization) Act (1/1990), are to provide all children with a common education "enabling them to acquire the basic elements of the culture, and to learn oral expression, reading, writing and arithmetic, as well as gradual independence of action in their environment".

1281. It comprises three cycles, each lasting two academic years. In order to progress from one cycle to the next, pupils must be found to have achieved the objectives set, through a proper evaluation of their learning based on continuous assessment. Programming of this learning is organized into compulsory subjects "of a global and integrating character" (art. 14 of the Act). Primary education must be dispensed by teachers competent to teach at this level; and article 16 also provides that "the teaching of music, physical education, foreign languages" and any other subjects to be determined shall be dispensed by teachers with special qualifications.

(n) Secondary education

1282. Compulsory secondary education comprises four academic years, from the ages of 12 to 16, and is organized into two cycles, each of two years. Students enter compulsory secondary education once they have completed primary education, in the calendar year in which they reach the age of 12.

1283. The purpose of education at this level is set forth in article 18 of Act 1/1990, and consists of "... transmitting to all students the basic elements of the culture, training them to shoulder their obligations and exercise their rights, and preparing them for their integration in working life or to embark on specific intermediate-grade vocational training or the baccalaureate". Compulsory secondary education must be dispensed by teachers who are graduates in the arts, engineering or architecture or who hold equivalent qualifications. Teachers must also have obtained a professional diploma in teaching, to ensure that they have been adequately trained in teaching techniques.

1284. Royal Decree 1345/1991 of 6 September, establishing the curriculum for compulsory secondary education, develops the provisions of paragraph 3 of article 4 of Act 1/1990 in this area. It incorporates the obligation incumbent on the education authorities to establish the curricula of the various educational levels, and is applicable in the territories under the jurisdiction of the Ministry of Education and Science. The curriculum established in the Royal Decree is of supplementary application in those Autonomous Communities that have full powers in educational matters, pursuant to article 149, paragraph 3, of the Constitution.

1285. Under article 17,

> "Adaptations may be made to the curriculum of compulsory secondary education that depart significantly from the contents and assessment criteria of the curriculum, in the case of students with special educational needs. Such adaptations may take the form of adjustments of educational objectives, elimination or inclusion of specific components and consequent amendment of the criteria for assessment, as well as the broadening of educational activities in certain areas of the curriculum. The aim of the adaptations to the curriculum to which this article refers shall be to ensure that students achieve the general capacities of the level, to the extent of their capabilities. In all cases, these adaptations to the curriculum shall be preceded by an evaluation of the student's special educational needs and by a specific curriculum proposal. The Ministry of Education and Culture shall determine the conditions in which those students with special educational needs who do not obtain a certificate of completion of secondary education may embark on an appropriate course of training that qualifies them for incorporation into the world of work."

Under article 18,

> "Diversifications of the curriculum may be established for students over 16 years of age, [to enable them] to acquire the general capacities characterizing that level."

Furthermore,

> "Students who on completion of compulsory secondary education have attained the objectives thereof shall be awarded the certificate of completion of secondary education which will entitle them to embark on the baccalaureate and intermediate-grade special vocational training (art. 19).

For those students at least 16 years of age who have not achieved the objectives of compulsory secondary education,

> "specific Social Guarantee Programmes shall be organized, the purpose of which shall be to provide them with a basic and vocational training enabling them to enter the world of work or continue their studies..." (art. 20).

1286. As regards educational guidance, article 11 provides that

> "1. The tutorial and guidance function that comprises part of the teaching function shall be continued throughout the level.
>
> 2. The teacher tutoring a group of students shall be responsible for coordinating both the assessment and the processes of teaching and learning, as well as the function of personal guidance of students, with the support, where appropriate, of the school's guidance services.
>
> 3. Special attention shall be accorded to educational guidance in the second cycle of the level, and it shall be intensified in the final year, with a view to the students obtaining the necessary preparation to enable them, at the end of this level, to make the academic and vocational choices most appropriate to their capacities and interests."

(o) Baccalaureate

1287. The baccalaureate comprises part of secondary education, and is open to students who have obtained the certificate of graduation in secondary education. The purpose of the baccalaureate is to the provide students with a general training, guidance and a preparation for higher studies, whether at university or in vocational training, and, where applicable, to enable them to gain access to the labour market. The baccalaureate comprises the two academic years from the ages of 16 to 18.

1288. There are four areas of study at baccalaureate level: arts; natural sciences and health studies; humanities; and social sciences.

1289. Those students who satisfactorily complete the two years of the baccalaureate are awarded the baccalaureate certificate, which entitles them to move on to higher-grade vocational training and university studies.

(p) Vocational training

1290. The General Education (Organization) Act (1/1990) also regulates vocational training intended to enable students to engage in various occupations, facilitating their participation in active working life. The legislation concerning this level of education is supplemented by Royal Decree 676/1993 of 7 May, establishing general guidelines for qualifications and minimum educational requirements for vocational training.

(q) Access to higher education

1291. As regards access to higher education, paragraph 2 of article 1 of Organizational Act 8/1985 establishes the right of "everyone to have access to higher levels of education, commensurate with their aptitudes and vocation". This provision also guarantees that in no case will students' access to higher education be limited for social, economic or any other reasons. Thus, it affirms that the right to higher education "shall not be subject to discrimination on grounds of the economic capacity, social status or place of residence of the student". Likewise, article 25 of Organizational Act 11/1983 of 25 August, reforming the universities, affirms that "study in the university of one's choice is a right of all Spaniards". That right must be exercised "under the terms established in the legal order", since the legislation governing the procedures for university entrance must be complied with.

(r) Educational guidance

1292. The meaning of educational guidance and the functions of its specialized services are defined within the general context of the educational reform, which sees guidance as an inherent component of education.

1293. Guidance must be seen as a task incumbent on the teaching body as a whole, to be conducted through tutorial activities. This task is the responsibility of all teachers, although at the level of secondary education it is also entrusted to a teacher specifically assigned to a group of students.

1294. Development of this guiding and tutorial function calls for specialized aid and support which is entrusted to specific guidance services and departments. Other specialized functions and tasks relating to guidance functions in a broader sense, whose scope of application is not confined to schools, are also assigned to such guidance services and departments.

1295. The tasks of the specialized guidance services and departments are to provide a psychological and pedagogical basis for the proposals for placement of students with special educational needs, and of proposals relating to planning, development and assessment of significant adaptations or diversifications of the curriculum for such students. Other tasks include, for example, those relating to academic and vocational guidance and promotion of cooperation between families and schools.

1296. Consistent with this approach, "specialized" educational guidance is organized around child guidance and educational support teams for children in nursery school and primary education, and child guidance departments in secondary schools. However, there are also some child guidance departments in primary education establishments (run on an experimental basis, and consequently in a state of flux) and in special education establishments.

1297. The objectives of these services are:

(a) To enable students to become gradually more involved in the taking of decisions that will affect their future;

(b) To coordinate educational resources in the area;

(c) To provide advice and technical support to schools and their teaching teams;

(d) To ensure prevention, identification and intervention in cases involving children with special educational needs.

Guidance is provided by means of a variety of measures.

1298. Introduction and development of child guidance departments in secondary schools. These departments perform the following tasks:

(a) Coordination, support and technical back-up for guidance and tutorial activities, and participation in teachers' assessments of their groups of students;

(b) Collaboration in the preparation of the school's educational and curriculum programming, as regards both form and content;

(c) Promotion of cooperation between families and schools to provide a more effective education;

(d) Support for those aspects of education tailored to individual requirements: adaptations to the curriculum, development programmes, psychological and pedagogical back-up and support;

(e) Assistance to students in becoming integrated in school and in their peer group, particularly during periods of transition, upon new arrival at a school or when changing educational cycle;

(f) Provision of information, advice and guidance, on a one-to-one basis, to students concerning any educational or vocational choices they may have to make;

(g) Intervention in decisions of all kinds affecting students, especially as regards progress from one cycle to the next and educational back-up measures;

(h) Assistance to students in preventing and overcoming learning problems;

(i) Facilitating liaison between schools and the local child guidance and educational support team.

1299. Introduction and development of child guidance and educational support teams in nursery and primary education. These teams perform a variety of activities:

(a) Collaboration with the teachers and resources centres and other institutions, on continuing education in the fields of child guidance and educational support;

(b) Support for collaboration and exchanges of experience between schools;

(c) Psychological and pedagogical assessment of students with special educational needs;

(d) Preparation, adaptation, distribution and/or dissemination of materials and equipment for use in child guidance and educational support;

(e) Provision of advice and technical support to schools and their teaching teams, in

(i) Drawing up educational and curriculum plans;

(ii) Implementation of appropriate changes in organization and methodology;

(iii) Design and implementation of methods and procedures for assessment of students and of approaches to teaching;

(f) Provision of advice and assistance to teachers in their role as counsellors and tutors;

(g) Support for coordination between groups of teachers from different levels, cycles, seminars and departments, and between the school and students' families;

(h) Cooperation in improving teaching and learning processes, participating in the planning of aspects of teaching such as organization of classes, grouping together of students, design and implementation of educational recovery and reinforcement, and adaptations to the curriculum;

(i) Identification of children at risk in the district or province;

(j) Planning of early prevention and detection as regards children with special educational needs;

(k) Guidance and, where applicable, intervention, providing the most appropriate response to needs;

(l) Identification and establishment of channels of communication for coordination between social, medical and child guidance and educational support services in the area;

(m) Encouraging closer links between families and the school;

(n) Collaboration and provision of advice in the preparation of adaptations to the curriculum, whether applicable to the school or class as a whole or to individual students;

(o) Participation in the design of materials suited to the needs of students and of programmes to involve families in their children's education.

(s) Cross-curricular teaching

1300. In the framework of the General Education (Organization) Act, the Royal Decrees establishing the curricula at the various levels of education identify certain topics that are to be taught across the curriculum. These are: moral and civic education and education for peace; health and sex education; and education in equal opportunities for the sexes, and in environmental, consumer and road safety issues.

1301. The insistence that these issues must be addressed in all areas of teaching confers a new dimension on the curriculum, which can no longer be seen as compartmentalized or fragmented, but as bound together by interlinked objectives and overarching principles giving it coherence and unity. These themes or dimensions recur as unifying threads within the curriculum, not so much running through it as cutting across it.

1302. Indeed, these cross-cutting themes so permeate the various areas of the curriculum that at any given moment in the lesson it may be a moot point whether the teacher is tackling an individual subject or a cross-cutting theme. It is a two-way process: the cross-curricular themes are present in the subjects, and vice versa. Consequently, cross-curricular teaching is not a new component of the syllabus, but rather, a new way of organizing some of its contents around a specific educational axis.

(t) School discipline

1303. The Spanish education system conforms to the precepts contained in the Spanish Constitution, and articles 10, 14 and 15 of the Constitution guarantee respect for human dignity, the right to life, and physical and moral integrity, as well as prohibiting all forms of "inhuman or degrading punishment or treatment", for all persons without distinction. Furthermore, the legislation enacted in application of article 27 of the Constitution, which establishes the right to education, constitutes a legal framework fully guaranteeing the rights of the child.

1304. Thus, article 6 of the Right to Education (Organization) Act (8/1985), which enumerates the basic rights of pupils, recognizes the right "to respect for their personal dignity and integrity".

1305. Article 17 of Royal Decree 732/1995 of 5 May, regulating the rights and obligations of pupils and the internal rules governing social behaviour in schools, to which reference has already been made, establishes that "all pupils have the right to respect for their physical and moral integrity and personal dignity, and may in no circumstances by subjected to humiliating or degrading treatment". Article 43.2(b) of the Decree prohibits the imposition on pupils of "punishments inconsistent with the physical integrity and personal dignity of the pupil".

1306. Pupils whose behaviour contravenes the school's rules of social behaviour may be punished in school, but only in accordance with the sanctions provided for in Royal Decree 732/1995; accordingly, the imposition of any other sanction on a pupil is deemed unlawful. Provision is made for punishment of behaviour contrary to those rules, where the misbehaviour has taken place within the school or in the course of extra-curricular or extramural activities, and of behaviour outside the school which is directly related to school life and affects other members of the school community.

1307. The regulations provide for the following punishments:

(a) Rebuke, issued in private or in writing;

(b) Interview with the Head of Studies;

(c) Imposition of special work to be done outside school hours;

(d) Imposition of tasks contributing to the improvement and smooth running of the school's activities, or to repair damage caused to the school's installations or equipment or to property belonging to other members of the community;

(e) Suspension of the right to participate in out-of-school or extra-curricular activities;

(f) Placement of the pupil in a different group for a maximum period of one week;

(g) Suspension from attending certain classes for a maximum period of three days. Where this punishment is imposed, the pupil must do homework or additional work so as to ensure that his or her education is not interrupted;

(h) Suspension from school for a maximum period of three school days.

1308. Where this last punishment is imposed, the same stipulation applies, to ensure that the pupil's education is not adversely affected.

1309. The punishments described under subparagraphs (d) to (h) above may be imposed for behaviour described as "seriously detrimental". In these cases only, there is also provision for a change of school, guaranteeing a place in another establishment if the pupil is in compulsory education. In short, pupils are guaranteed the right to be subjected to discipline free from arbitrariness, an issue that directly affects the essential content of the right to education, since the exercise of that constitutional right would be vitiated if, in the words of the Constitutional Court, "... it were then possible arbitrarily to sanction pupils in schools for alleged breaches of discipline the ultimate consequence of which could be expulsion from the school".

1310. Behaviour described as "seriously detrimental" to coexistence in the school requires the preparation of a report by a member of the teaching staff appointed by the Head Teacher, within ten days of the misbehaviour coming to the attention of the authorities. The child and the parents, guardians or custodians must be informed of the initiation of the report procedure, and have the right to appeal to the Head Teacher if they consider that the report is likely not to be objective. In all cases, pupils below 18 years of age and their parents or guardians must be allowed a hearing, and have the right to be kept continuously informed of the behaviour attributed to the pupils and of the sanctions envisaged. The decision on the proceedings must be endorsed by the School Council within one month. Pursuant to the Legal Regime of Public and Ordinary Administrations Act (30/1992 of 26 December), an appeal against the decision may be lodged with the Provincial Director. In addition, the Technical Inspectorate must be informed of the initiation, progress and outcome of the disciplinary proceedings.

(u) Assessment of students

1311. Pupils in schools have the right to have their academic performance assessed in an objective manner. To ensure application of this principle, paragraph 3 of article 13 of Royal Decree 732/1995 provides that pupils, teachers and parents or guardians should remain in constant contact, so as to ensure that pupils and their parents or guardians keep abreast of "pupils' academic development, of the progress of their learning process, and of the decisions taken on the basis of that progress".

1312. Pupils, and also parents or guardians, may challenge the decisions taken and qualifications awarded at the end of an academic year or cycle on the basis of the assessment process.

(v) International cooperation

1313. As regards international cooperation, article 2 of Organizational Act 8/1985 and article 1 of Organizational Act 1/1990 include among the objectives of education "education in peace, cooperation and solidarity among peoples".

1314. As regards Spain's participation in fostering international cooperation on educational matters, Spain is a member of those international bodies, including in particular United Nations agencies such as UNESCO, that work directly to promote education in the world.

1315. In 1969, the International Bureau of Education (IBE), which periodically organizes international conferences on education in which Spain participates, became part of UNESCO. In 1972 UNESCO also set up the European Centre for Higher Education, with its headquarters in Bucharest, the purpose of which is to secure cooperation in educational matters, particularly with a view to facilitating student and teacher mobility in the European Region. The Club of Rome, which, while a private law body, has undoubted influence in international forums dealing with this question, is dedicated to the improvement of human societies, taking a pronounced interest in education, particularly as regards the quality of teaching and inter-cultural issues.

1316. Spain has ratified the various international declarations, covenants and treaties that protect human rights throughout the world, which include provisions relating to education.

1317. In this connection, mention may be made of article 26 of the Universal Declaration of Human Rights, of 10 December 1948, which proclaims the right to education, declaring elementary education to be compulsory and free; the First Protocol, concluded on 20 March 1952, to the European Convention on Human Rights, article 2 of which affirms that "no person shall be denied the right to education"; the Convention Against Discrimination in Education, adopted by the UNESCO General Conference on 14 December 1960, which seeks to eliminate discrimination in educational matters; and the International Covenant on Economic, Social and Cultural Rights, concluded on 16 December 1966, article 13 of which commits States Parties to recognizing the right to education and establishing a State education system so as to ensure full enjoyment of that right.

1318. Furthermore, Spain's accession to the European Communities following its signature of the Madrid Treaty on 12 June 1985 resulted in Spain's integration into the Community's education policies. The Treaty establishing the European Union transferred powers in educational matters, with the result that, whether through bilateral agreements with third countries, joint agreements between the European Communities and third States or groups of States, European Association Agreements with the Countries of Central and Eastern Europe, Europe-Mediterranean agreements or the MERCOSUR Agreement, Spain now participates in common objectives and policies in educational matters, the priority aim of which is to promote education in disadvantaged or developing societies.

1319. See also chapter I.J.

2. Measures adopted by the Autonomous Communities

1320. Regulation of the education system in those Autonomous Communities to which powers in educational matters have been transferred, and also in those in which education is still the responsibility of the Ministry of Education and Culture, basically abides by the provisions of the legislation already cited, and, in particular, of Organizational Act 1/1990, although the Autonomous Communities have also developed and adapted it in the light of their own specific local features, both in the public sector and as regards concertation with private schools.

1321. Guarantees of the fundamental right to education are expressly alluded to in the legislation on children referred to in previous chapters, concerning children generally and also those in risk situations or situations of desamparo who are under the protection of the autonomous administration (see chapter V.F).

1322. These same laws commit the autonomous educational and municipal authorities to making coordinated efforts to ensure that all children enjoy that right, in accordance with the principles of coeducation, non-discrimination, participation and equality of opportunities, and with the principles referred to in chapters III and IV of this report.

1323. The objectives are:

(a) Enrolment in primary and compulsory secondary education;

(b) Regulated vocational training;

(c) Measures to combat truancy;

(d) Detection and reporting within the school system of situations of risk and desamparo among children in school (ill-treatment, abandonment, unhygienic and unhealthy habits, drug dependency);

(e) Ensuring the necessary resources to educate children with special educational needs, with particular attention devoted to integration of disabled pupils;

(f) Compensating for other difficulties through Social Guarantee Programmes for children over 16 years of age who have completed compulsory schooling without achieving the goals of compulsory education and find themselves unqualified and unable to gain access to the labour market. These programmes seek to increase their linguistic and scientific knowledge and aptitudes so as to give them greater personal and cultural autonomy and, where applicable, bring them back into the education system or incorporate them in working life through acquisition of the basic knowledge and skills needed to engage in an occupation. Some Autonomous Communities are devoting special attention to personal autonomy and independence and to the integration in society and the labour market of children who, having reached the age of majority, continue to be housed in Community-run protection centres;

(g) Securing the integration into society and school of children subject to court measures or at high risk thereof, by means of family intervention, support in school and individual training, with the assistance of the youth courts;

(h) Ensuring continuity of education for children in hospital, through hospital classes;

(i) Ensuring continuity of education for children of families engaged in seasonal agricultural or itinerant occupations.

1324. In some Autonomous Communities specific measures are in place to prevent and compensate for inequalities at the outset of education for children of pre-school age who, for social, economic, cultural or geographical reasons, are not yet attending school. These are programmes for nursery education in the family, known as "out-of-school pre-schooling" or "home pre-schooling" programmes, under which children aged 0-3 are taught by peripatetic teachers. Some of these programmes, such as Galicia's Preescolar na Casa programme for children below the age of 3 and their parents living in socially and culturally deprived areas, have been running since the 1970s; Galicia's programme is supported by regular independent television broadcasts.

1325. Some Autonomous Communities devote particular attention to rural schools, with a view to improving the quality of education for pupils in rural areas through appropriate educational programmes.

1326. The Autonomous Communities' objective is full enrolment of pupils aged 3-5, providing sufficient places to fulfil this goal in the State sector and encouraging the setting up of nursery schools, in collaboration with the General State Administration and local authorities.

1327. The bilingual Autonomous Communities guarantee the right of access by pupils to education in the language of the Autonomous Community that enjoys official status on an equal footing with Spanish. Both Spanish and the local languages may be used as vehicles of instruction, in varying proportions, and in every case they are compulsory subjects under the language laws regulating the teaching of the language of the Autonomous Community in the general education system at pre-university level.

1328. Some Autonomous Communities with powers in educational matters implement distance learning programmes for students who, for various reasons, are unable regularly to attend an ordinary school providing an elementary or baccalaureate-level education.

3. Measures adopted by social organizations

1329. See also sections G and K of chapter I and sections A and D of chapter III. As already explained in chapter V, the social organizations that collaborate with the authorities in providing residential care for children subject to protection measures as a result of a situation of desamparo guarantee the children's education in local schools and their preparation for entry into the labour market.

1330. Some of the Platform organizations collaborate in conducting educational activities:

(a) Agreements with the Ministry of Education and Culture on official recognition of the training provided in the "Education for Development" programmes;

(b) Preparation, in collaboration with the Asociación Secretariado General Gitano, of educational materials in a programme to inculcate a spirit of tolerance and respect for diversity in compulsory secondary education;

(c) Preparation of educational materials on education in values;

(d) A "Cinema and Education in Values" programme.

1331. Since 1995 two of the Platform organizations have been collaborating on a socio-educational home care programme for children suffering from long-term illness and social, economic and cultural disadvantages, subsidized by the Ministries of Education and Culture and of Labour and Social Affairs. The purpose of the programme is to alleviate the plight of children who are prevented by illness from attending school or who, because they come from a low-income family or a poor region or for other reasons, are at a disadvantage when entering compulsory education or progressing to later levels.

1332. One of the Platform organizations, in collaboration with other NGOs and the administrations of Spain and the receiving countries, is developing close international cooperation in promoting the rights to education and health, with 13 projects in Latin America and the Caribbean and one in Morocco, involving the provision of school infrastructure, equipment and materials, measures to improve health and the quality of life, drinking water supplies and sanitation, and educational innovation projects.

1333. As a nationwide network of associations, the Spanish Confederation of Associations of Parents of Pupils (CEAPA) conducts a number of activities, including participation in School Councils and in Committees on Discipline and Social Behaviour in all schools, helping to run out-of-school activities, conducting campaigns to defend State schooling and to extend the public network of care services for children aged 0-3, developing an Education for Leisure programme and a School for Parents programme, and conducting research into academic attainment.

B. Aims of education (art. 29)
(CRC/C/58, paras. 112-116)

1. Measures adopted by the State

1334. Section A of this chapter contains abundant information on the objectives of education.

1335. In addition, paragraph 2 of article 27 of the Spanish Constitution provides that "Education shall have as its objective the full development of the human character compatible with respect for the democratic principles of coexistence and for the basic rights and freedoms."

1336. In line with the Constitution, article 2 of the Right to Education (Organization) Act (8/1985) and article 1 of the General Education (Organization) Act (1/1990) establish the purposes of education, on the basis of article 29 of the Convention. Both Acts consider the purposes of the Spanish education system to include "training in respect for fundamental rights and freedoms and in the exercise of tolerance and freedom within a framework of the democratic principles of coexistence". The aim of the education system must be "preparation to participate actively in social and cultural life", and it must pursue "training for peace, cooperation and solidarity among peoples", respecting "Spain's linguistic and cultural pluralism".

1337. Article 2 of Act 1/1990 also highlights the principles that must inform educational activity.

1338. Among the principles enumerated therein are "training on an individual basis", so as to provide pupils with an education "complete in terms of knowledge, skills and moral values and for all spheres of life, both personal, family, social and vocational". The participation and cooperation of parents or guardians in the children's education are also guaranteed; the principles of equality and non-discrimination are reiterated; habits of democratic behaviour and participation by pupils in "the teaching and learning processes, schools and the various aspects of the system" are to be fostered; and, lastly, emphasis is placed on the "relationship with the social, economic and cultural environment".

1339. All these principles are further developed in the regulations implementing the curriculum at the various levels, stages, cycles, grades and modalities of the education system, and in cross-curricular teaching, with due account taken of pupils' differing ages and levels of maturity, as noted in section A of this chapter.

1340. Article 2 of Royal Decree 1006/1991 of 14 June, establishing the minimum content of primary education, establishes that the objectives to be attained by pupils in the course of primary education include:

> "understanding and producing messages [...] in Spanish, and, where applicable, in the language of the Autonomous Community";
>
> "acting autonomously in daily activities and in group relations...";
>
> "collaborating in the planning and conducting of group activities...";
>
> "establishing balanced and constructive relations with others, [...] behaving with solidarity, recognizing and critically assessing social differences and rejecting any form of discrimination based on differences of sex, social class, belief, race or other individual and social characteristics";
>
> "understanding and establishing links between facts and natural and social phenomena, and contributing actively, to the extent of their abilities, to the defence, preservation and improvement of the environment";
>
> "becoming familiar with the cultural heritage, participating in its preservation and improvement and respecting linguistic and cultural diversity as a right of peoples and individuals...";

> "becoming familiar with and appreciating their own bodies and contributing to their development, adopting habits conducive to their health and welfare...".

1341. These are also objectives of compulsory secondary education (Royal Decree 1345/1991 of 6 September, establishing the curriculum of compulsory secondary education, art. 4), in which the objective is defined in greater detail as "analysing the mechanisms and values that govern the functioning of societies, particularly those relating to the rights and duties of citizens...".

1342. The development of environmental education in the education system as a cross-curricular component of the broad theme of respect for the environment is intended to ensure that pupils acquire an awareness of the global environment, become sensitive to and experience it, develop environmental values, interests and concerns, and participate actively in improving and protecting it.

1343. Information on participation and associative activities involving pupils is provided in chapter IV.

1344. Paragraph 6 of article 27 of the Spanish Constitution recognizes the freedom of individuals and legal entities to set up teaching establishments. The Supreme Court has recognized this freedom as a prime manifestation of the freedom of education guaranteed in paragraph 1 of article 27 of the Constitution, since it implies the absence of a State monopoly on education and the existence of educational pluralism. The Right to Education (Organization) Act (8/1985) reaffirms that right, although it restricts it to persons of Spanish nationality.

1345. Paragraph 2 of article 21 of that Act also prohibits "persons providing services in the State or local education administration" from running private schools. That prohibition also extends to persons who have a criminal conviction for committing wilful wrongs, and to individuals and legal entities who have been specifically deprived of the exercise of that right by enforceable court judgement. Also prohibited from running private schools are "legal entities in which the persons included in the preceding paragraphs perform directorial functions or hold 20 per cent or more of the capital". The prohibition on persons providing services in the Administration setting up teaching establishments is based on the objectivity of administrative action guaranteed in article 103 of the Constitution, which seeks to avoid conflicts between the interests of the public authorities and those of individuals. The other restrictions on the setting up of educational establishments are founded in the protection of the rights of the child, so that in the event of a conflict of rights, it is the rights of the child that will prevail.

1346. Furthermore, the freedom to set up schools extends both to the creation of schools which dispense teaching included in the education system and which, in consequence, award officially recognized qualifications, and to those which are unregulated. The difference between these two types of school is very important, as the former are subject to controls by the education authorities, thereby guaranteeing enjoyment of the right to education, as enshrined in the Spanish education system, and respect for the other rights of the children being taught in such schools. For that reason, administrative authorization is required in order to open private teaching establishments, and is granted only when they comply with the minimum requirements laid down in the legislation. In this regard, paragraph 2 of article 14 of Act 8/1985 establishes that the minimum requirements shall concern "the academic qualifications of the teaching staff, the numerical ratio between pupils and teachers, teaching and sporting facilities and the number of places available for pupils". In addition, all teaching establishments, both public and private, are required to have a specific denomination and to be registered by the relevant education authority, which shall inform the Ministry of all entries in the Register.

1347. The preamble to Act 8/1985 proclaims that freedom of education "must be understood in the broad rather than the restrictive sense, as the notion encompassing the full range of freedoms and rights in the field of education. It unquestionably includes the freedom to set up teaching establishments and to provide them with their own educational plan." Moreover, article 22 of the Act guarantees private schools the freedom to establish their own characteristics, in the framework of the Spanish Constitution and always provided they respect the rights conferred by the Act on teachers, parents and pupils. The Spanish Constitution and respect for the rights of all members of the educational community thus constitute a limitation on the freedom to set up schools - one imposed by the Constitution itself in paragraph 6 of article 27, which includes the proviso that they must "respect constitutional principles". That restriction guarantees compliance with the educational order, and accordingly ensures that all the sectors concerned, whether pupils, parents or teachers, enjoy the rights recognized by the Spanish Constitution and legislation. In particular, the public authorities must guarantee that children enjoy the rights to which they are entitled and which are recognized by the legal order, including, in particular, the Constitution and the Convention on the Rights of the Child.

1348. Article 7 of Royal Decree 155/1996 of 2 February, approving the Implementing Regulations of the Rights and Freedoms of Foreigners in Spain (Organization) Act (7/1985 of 1 July), establishes that

> "Foreigners shall have the right to education and freedom of education, as well as the right to set up and run teaching establishments in compliance with the legislation governing these matters, bearing in mind the precepts contained in international treaties signed by Spain, or, where none is applicable, having regard to the principle of reciprocity."

2. Measures adopted by the Autonomous Communities

1349. See section A of this chapter.

C. Leisure, recreation and cultural activities (art. 31)
(CRC/C/58, paras. 117-118)

1. Measures adopted by the State

1350. See also chapter IV.G of this report.

1351. Paragraph 1 of article 7 of the Protection of Minors Act (1/1996) proclaims that "Minors have the right to participate fully in the social, cultural, artistic and recreational life of their environment." Moreover, the Public Administrations "must take into account the needs of the minor [...], especially in matters of control over food products, consumer matters, housing, education, sanitation, culture, sport, entertainment, the media, transport and public spaces in towns. [They] shall, in particular, ensure adequate regulation and supervision of those spaces, centres and services in which children customarily congregate, both as regards their physical and environmental conditions and conditions as regards hygiene, sanitation and human resources, education projects devoted to them, participation by minors and other conditions contributing to ensuring their rights." (art. 11.)

1352. There is a wealth of legislation regulating other aspects of leisure and cultural activities involving children, which was discussed in the initial report of Spain.

1353. The policing of public entertainments and recreational activities falls within the competence of the Autonomous Communities. At State level, and where the Autonomous Community has not yet legislated, Royal Decree 2816/1982 remains in force. Article 60 of that Decree establishes that

> "1. Persons below 16 years of age are prohibited from entering or frequenting dance halls, discotheques, ballrooms, public shows or entertainments generically or specifically classified by

> the Ministry of Culture as restricted to persons over 16 years of age, and, generally, any public places or establishments in which their health or morals may suffer, without prejudice to any other age limitations to be established by special regulations governing matters falling within the competence of the various ministerial departments or, where applicable, the Autonomous Communities.
>
> 2. Persons below 16 years of age who enter establishments, shows or entertainments not covered by the prohibition in the previous paragraph shall not be sold or permitted to consume any type of alcoholic beverage.
>
> 3. The owners or persons in charge of or with responsibility for the establishments, shows or entertainments referred to in paragraph 1 must, in person or through their doormen or employees, prevent persons below 16 years of age from entering such premises and expel any who have entered, where necessary with the assistance of officials of the Authority.
>
> 4. Where there is doubt as to the age of the minors seeking to enter or who have succeeded in entering said establishments, shows or entertainments, the persons referred to in the previous paragraph must require them to present their National Identity Document as proof of their age.
>
> 5. Notices must be displayed in places visible from outside the premises or establishments covered by this article, such as ticket booths and entrances, and also within said establishments and premises, bearing the words: entry prohibited to persons under 16 years of age. That same prohibition must also expressly appear on the posters, brochures, programmes or leaflets advertising such establishments, shows or entertainments."

1354. Article 61 establishes that

> "Except in the case of outdoor festivals, fairs and public attractions, access to any public establishment or premises for public shows or entertainments during the hours of darkness by persons under 16 years of age not accompanied by adults responsible for their safety and moral welfare is strictly prohibited, even if the performance or activity is deemed suitable for them. In such cases also, the regulations contained in paragraphs 3 and 4 of the previous article shall be applicable."

1355. Article 5 of Royal Decree 192/1988 of 4 March, on limitations on the sale and use of tobacco for the protection of public health, establishes that

> "1. It is prohibited to sell or supply to persons under 16 years of age tobacco products or products in imitation of them or that encourage the habit of smoking and are harmful to health. Notices drawing attention to this prohibition shall be displayed in premises where tobacco is on sale.
>
> 2. Persons under 16 years of age are prohibited from using automatic cigarette vending machines. The proprietor of the premises in which such machines are located shall be responsible for enforcement of this prohibition."

1356. Article 1 of Act 1/1982 of 24 February, regulating special premises for the viewing of films and the Spanish film archive and setting dubbing rates, provides that

> "Films of a pornographic nature or that glorify violence shall be rated with an X certificate by resolution of the Minister of Culture, on a report by the Film Classification Board, and shall be

> shown exclusively in special premises which shall be designated as X-rated cinemas. No other class of films may be shown in such premises, and in no circumstances shall persons under 18 years of age be admitted to them."

1357. Article 11 of Act 25/1994 of 12 July, which incorporates Directive 89/552/EEC, on the exercise of television broadcasting activities, into the Spanish legal order, provides that

> "The advertising of alcoholic beverages must comply with the relevant provisions of General Advertising Act 34/1988 of 11 November, and with the following principles:
>
> (a) It shall not be targeted specifically on minors, or, in particular, depict minors consuming such beverages.
>
> (b) It shall not associate the consumption of alcohol with an improvement in physical performance or the driving of vehicles, or give the impression that the consumption of alcohol contributes to social or sexual success, or suggest that alcoholic beverages have therapeutic properties or a stimulant or sedative effect, or that they are a means of resolving conflicts.
>
> (c) It shall not encourage immoderate consumption of alcoholic beverages or present a negative image of abstinence or sobriety, or emphasize their high alcohol content as a positive quality."

1358. Article 16, on protection of minors from advertising, provides that

> "Television advertising shall not contain images or messages that may cause minors moral or physical harm. Accordingly, it must respect the following principles:
>
> (a) It must not directly encourage minors to purchase a product or service by exploiting their inexperience or credulity, or to persuade their parents or guardians, or the parents or guardians of third parties, to purchase such products or services.
>
> (b) In no circumstances shall it exploit children's especial confidence in their parents, teachers or other persons.
>
> (c) It shall not, without justifiable reason, depict children in dangerous situations."

1359. Article 17 provides that

> "1. Television broadcasts shall not include programmes or scenes or messages of any kind that may seriously harm the physical, mental or moral development of minors, or programmes that encourage hatred, contempt or discrimination on grounds of birth, race, sex, religion, nationality, opinion or any other personal or social circumstance.
>
> 2. The broadcasting of programmes likely to harm the physical, mental or moral development of minors and, in any event, of programmes containing pornographic or gratuitously violent scenes, shall take place only between the hours of 10 p.m. and 6 a.m. and shall contain visible and audible warnings as to their content.
>
> These provisions shall also be applicable to those broadcasting slots devoted to promoting the programmes themselves."

1360. The purpose of article 54 of the Order of 9 January 1991 establishing programmes of action on behalf of emigrants is

> "to offer the descendants of Spanish emigrants resident abroad contact with contemporary Spanish life and communication with other young Spaniards resident in Spain, through participation in holiday camps in this country; to promote the integration of descendants of Spanish emigrants resident abroad in the host societies, through contact in Spain, in the course of the holiday camps, with other young people who are nationals of those societies."

Leisure and quality of life promotion programmes

1361. These programmes, funded by the Ministry of Labour and Social Affairs and implemented by NGOs, seek to promote the personal and social development of children and their families, chiefly through the organization, within a framework of stable services, of leisure activities encouraging their participation in society.

1362. The children targeted by these programmes must be drawn from socially disadvantaged areas and families. The activities, camps, summer hostels and other leisure services contribute to the integration of children and families in social difficulties, particularly those from the following groups: ethnic minorities; physically and mentally disabled persons and those with sensory disabilities; refugees and immigrants; and children in hospitals and youth detention centres or living in prisons.

2. Measures adopted by the Autonomous Communities

1363. Declarations equivalent to those in Act 1/1996 are to be found in the autonomous legislation on children, in which reference is made to the right of the child to rest and leisure, to play and recreational activities, and to participate freely in cultural life and the arts.

1364. In these laws, the autonomous administrations undertake, as a guiding principle of administrative action in matters concerning children, to foster, with the participation of the local administration and NGOs:

(a) Access to the Community's cultural property and resources, promoting familiarity with and participation in its values, history, language and traditions;

(b) The setting up of adequately resourced educational units in museums, libraries and other similar institutions;

(c) Play as a component of day-to-day activity, ensuring that toys are appropriate to the needs of the children for whom they are intended and to the psycho-motor development associated with each stage of growth;

(d) Sports and other leisure and free-time activities, both in school and through community action;

(e) The development of leisure associations for children and young people;

(f) In urban planning, the setting aside and equipping of areas for use by children;

(g) Pedestrianization of areas around schools and other areas frequently used by children, so as to ensure safe access;

(h) The creation and provision of segregated areas for use by children, suitably equipped, offering guaranteed safety, and with particular account taken of the problems of access experienced by disabled children."

1365. In this regard, one Autonomous Community has already specifically regulated safety requirements for playgrounds and play equipment.

1366. The Children's and Youth Plans implemented by the Autonomous Communities, to which reference was made in chapter I, include cultural, sporting and recreational activities.

1367. The youth information centres play an important role in offering children and young people access to these activities.

1368. In encouraging these educational, cultural, recreational, leisure and free-time activities, the administrations of some Autonomous Communities stress their importance in preventing and eliminating marginalization of children and for the avoidance of social risk situations in their education.

1369. The Children's and Young People's Leisure Schools help to train monitors and leisure activity leaders in the Autonomous Communities.

1370. Some of the autonomous legislation on children also imposes prohibitions on certain activities regarded as harmful to their development:

(a) Sports whose rules allow for the possibility of physical injury to any of the participants;

(b) The advertising of activities or products forbidden to minors;

(c) The use of slot machines offering prizes in coin ("one-armed bandits");

(d) The acquisition and consumption of tobacco and alcoholic beverages;

(e) The use of recreational equipment featuring incitements to violence or violent games;

(f) Entering the following establishments:

(i) Those specifically given over to the sale of alcoholic beverages, except when accompanied by the parents, guardians or custodians;

(ii) Bingo halls, casinos, premises devoted to gambling or betting, and those in which slot machines offering prizes in coin ("one-armed bandits") are played;

(iii) Those showing representations of violence or pornography or spectacles the content of which is otherwise detrimental to children's personal development;

(iv) Those hosting competitions or sporting events whose rules allow for the possibility of physical injury to any of the participants.

1371. Some Autonomous Communities are currently engaged in a public debate on regulating access by children to boxing matches and bullfights.

1372. In all these activities, concern is shown to promote children's knowledge of the language of their Autonomous Community.

1373. As regards participation by children in the mass media, and in particular television, while the public authorities are entrusted with the task of encouraging the social and cultural participation of children, inter alia, by making media slots available to them, the Autonomous Communities have also enacted legislation the aim of which is to ensure that such participation does not result in a conflict with other rights of the child, and, in particular, the right to honour, privacy and reputation.

1374. Attendance and participation by children in public performances have also been regulated recently in a number of enactments in exercise of the Autonomous Communities' powers in the matter.

3. Measures adopted by social organizations

1375. See the information on leisure and free time programmes in section A of chapter III, and also, in section A of this chapter, information on the socio-educational home care programme, which includes individual and collective leisure and free time activities.

1376. One of the Platform organizations has shown particular interest in prevention of accidents in children's playgrounds and has contributed to the report recently submitted by the Office of the Ombudsman on this matter, drawing attention to the absence of legislation regulating safety conditions for playground equipment, launching an intensive follow-up campaign, channelling complaints from users, and urging the municipalities to rectify any anomalies identified.

VIII. SPECIAL PROETCTION MEASURES

A. Children in particularly difficult situations

1. Refugee children (article 22 of the Convention) (CRC/C/58, paras. 119 to 121)

1377. See also chapters II and III.A.

1378. Juvenile asylum seekers are subsumed within the category of "vulnerable population groups" and their applications are considered in accordance with the guidelines contained in the international recommendations pertaining to them. This includes appointment of a guardian, surveillance of the guardianship by the Government Procurator's Office, and access to the social benefits appropriate to their circumstances.

1379. As explained in section III.A above of this report, when minors enter Spanish territory accompanied by one or both of their parents, they are covered by the "family extension of asylum" provided for in article 10 of Act 5/1984 of 28 March governing the right to asylum and refugee status, which stipulates that asylum is granted by extension to the first degree ascendants and descendants - dependent minors - of the refugee, as also to a spouse or person with whom he or she is similarly linked by ties of affection and cohabitation.

1380. Accordingly, in the case of foreign minors included in their parents' application for asylum, and in accordance with articles 11, 12 and 15 of Royal Decree 203/1995, of 10 February, approving the Regulations for the implementation of Act 5/1984, the submission of the application by the parents entails the granting of provisional right of stay (or entry into Spain if they did not come with their parents in the first place), the fundamental guarantee of not being returned or expelled to the country of persecution and, where the parents lack adequate economic means, the benefits of the social, educational and health services provided by the competent public authorities.

1381. With regard to juvenile refugees or asylum seekers, a favourable decision on an application from their parents in which they were included in accordance with the aforementioned provision for "family extension" makes it incumbent upon the competent authority, in pursuance of the Regulations for the implementation of Act 5/1984, article 29.2, to issue them an identity document authorizing "the refugee and such dependants or family members as have been granted right of family extension to reside in Spain and engage in occupational activities". Of course, as in the case of asylum seekers, if refugees have no work or economic resources to meet their needs or those of their families (article 30 of the Regulations), they will be eligible to benefit from the social, educational and health services provided by the competent public authorities (article 15.1 of the Regulations).

1382. Article 15.4 of these Regulations refers expressly to child asylum seekers and provides that juvenile asylum seekers shall be represented by their legal guardians during the processing of their applications and that requests for asylum must be dealt with in accordance with the international conventions and recommendations applicable to juvenile asylum seekers. Apart from this, our legislation on asylum contains no specific references to the situation of child asylum seekers and no asylum procedure has been established covering the specificities of the situation in regard to the child population.

1383. Nevertheless, the eventuality of minors seeking asylum is taken into account in the general rules applicable to minors in need of protection set out in Royal Decree 155/1996 of 2 February approving the Regulations for the implementation of Organizational Act 7/1985 of 1 July on rights and freedoms of aliens in Spain.

1384. Article 12 of the Royal Decree quotes the Convention itself and makes special mention of the right of such children to education, health care and such other social benefits as are provided for in the Convention and in the Protection of Minors Act.

1385. Article 13 of Royal Decree 155/1996 lays down that:

(a) Where minors in need of protection within the meaning of the relevant civil legislation are concerned, their cases shall be referred to the services for protection of minors of the Autonomous Community concerned, and at the same time brought to the attention of the Government Procurator's Office. Under no circumstances may such minors be subjected to the expulsion measures provided for in article 26.1 of Organizational Act 7/1985 and in these Regulations:

(i) If the case concerns juvenile asylum seekers, it shall be governed by the provisions of article 15, paragraph 4 of the Regulations for implementation of Act 5/1984 of 26 March regulating the right to asylum and refugee status, as amended by Act 9/1994 of 19 May.

(ii) In other cases, the competent public bodies shall cooperate with the services for protection of minors with a view to reuniting the minors with their families in their country of origin or the country where their family members are residing. Likewise, such minors may be repatriated provided the competent services for the protection of juveniles in their country of origin assume responsibility for them. In any case, the Spanish authorities must ensure that repatriation does not entail personal risk to the minors concerned or persecution of them or members of their families.

(b) On application by the body exercising guardianship, the minor shall be granted a residence permit whose effects shall be backdated to the time when he or she was placed at the disposal of the competent services for the protection of minors of the Autonomous Community concerned. Should the minor possess no identity documents and for any reason cannot be provided with them by the authorities of any country, documentation shall be established in accordance with the provisions of article 63 of the Regulations.

1386. Article 14 of the Decree lays down that:

> "The reception in Spain of foreign minors under temporary residence schemes is subject to express authorization by whoever exercises parental authority or guardianship, as also by the authorities of the country of origin if an armed conflict situation so necessitates. The agreement of the competent body dealing with minors for the Autonomous Community will also be necessary. The Ministries of Foreign Affairs and of Justice and the Interior shall coordinate and authorize the reception of such minors and arrangements for their stay. Should the change of location entail arrangements for schooling, the bodies competent for dealing with minors shall seek the cooperation of the bodies competent in regard to education."

1387. Article 15 of the Decree, concerning transfer to Spain for purposes of adoption of foreign minors from conflict areas, lays down that:

> "Minors coming from a country or region in a state of armed conflict may not be brought to Spain for purposes of adoption except where it is authoritatively established that all appropriate steps to trace their families have been taken, through the competent bodies, and that the precautions dictated by the international commitments entered into by Spain, together with the recommendations of international agencies competent in the area, have been duly observed."

1388. The international agreements to which Spain is a party and which apply particularly to child refugees include among others, and in addition to the Convention on the Rights of the Child, those referred to in Annex B, chapter VIII, section A.1.

1389. Where juvenile asylum seekers are unaccompanied, the provisions of Royal Decree 155/1996 are also applicable to them.

1390. The ordinary procedure for dealing with applications for asylum guarantees the rights of asylum seekers, though it contains no specific provisions tailored to the needs of minors.

1391. Under this ordinary procedure the investigation of the case is referred to the Asylum and Refuge Office. During the investigation the applicant can submit supplementary documentation and information. The Asylum and Refuge Office, for its part, is empowered to request information from the organs of the State administration and from other public bodies, and there are included in the file, as appropriate, the reports of the Office of the United Nations High Commissioner for Refugees (UNHCR) or of organizations whose aims include the protection of refugees. As regards the decision-making procedure, an interministerial committee, on which UNHCR is represented without the right to vote, draws up a proposal, with a statement of reasons, for submission to the Minister of the Interior who takes the final decision, unless the Ministry's opinion is not in accord with the Commission's proposal, in which case it is the Council of Ministers which decides. This decision brings to a close the administrative proceedings, and in case of refusal the way is opened for judicial remedies.

1392. Spanish legislation on asylum affords protection only to those who meet the requirements for being considered as refugees under the Convention relating to the Status of Refugees. Act 5/1984 of 26 March governing the right to asylum and refugee status merely provides, in respect of persons who have had to leave their country owing to serious conflicts or disturbances of a political, ethnic or religious nature, but who cannot prove that they have good reason for fearing racial, religious or political persecution, that refusal of asylum does not entail expulsion from the country and that, within the scope of the general legislation on aliens, such persons may be authorized to remain in Spain.

1393. The situation of individuals designated as "displaced persons" is governed by Royal Decree 203/1995 of 10 February approving the regulations for the implementation of Act 5/1984. Thus, the First Additional Provision of the Royal Decree provides that they should be issued with a residence permit, initially for a period of not less than six months, and that if on the expiry of that period the conflict persists the permit shall be extended for renewable one-year periods and that those concerned shall then be granted work permits in accordance with the legislation on aliens. It is explicitly noted that displaced persons shall be entitled to benefit from the principle of non-return to the country in a state of conflict and that, when three years have elapsed since their entry into Spain without the situation having changed in the country of origin, a displaced person may apply for a "more favourable status except where reasons of public concern make it desirable to adopt other measures".

1394. Finally, the Second Additional Provision of this Royal Decree establishes an exception within the category of "displaced persons" and treats as "emergency situations" cases of mass influx of displaced persons, who are to be accorded special treatment as proposed by the Office of Asylum and Refuge and submitted to the Interministerial Committee on Asylum and Refuge for consideration and approval.

1395. Within the scope of this legislation governing asylum in Spain, the conditions are established for enjoyment by citizens of other countries of the right to asylum, Spain thereby undertaking the commitment to bring refugees from their place of origin, accepting an annual quota.

Reception programmes

1396. The protection afforded by asylum consists not only in not returning individuals to their countries of origin and accordingly refusing requests for extradition, but also in providing effective facilities for reception and social integration.

1397. Currently about 800 asylum and refuge seekers are living in the refugee care centres (50 per cent in centres belonging to the Institute of Migration and Social Services and the rest in centres run by subsidized NGOs). Economic aid for housing and maintenance costs is also available through the Spanish Red Cross (from 36 510 to 66 630 pesetas per family per month) financed by the Ministry of Labour and Social Affairs.

1398. Also available to this group, through the Spanish Red Cross, is a health protection programme, through which they have access to programmes in the medical and health fields similar to those provided by the social security system.

1399. In addition, there exists for asylum seekers a range of services covering legal advice, interpretation and translation, protection of the right of association, repatriation, reunification of families, transfer to third countries, etc.

1400. The final aim of the protection afforded to refugees as a group is educational advancement and professional training, seen as a sine qua non for social integration, which begins with learning the

Spanish language. The resources for this are targeted mainly to persons requesting asylum and intending to settle for good in our country.

1401. With a view to promoting the personal autonomy of refugees through employment, training courses are offered at the National Employment Institute, while facilities for professional training, acquisition of social and cultural skills, and job seeking are provided by various bodies, notably through community programmes such as the INLANDER-CAR project of HORIZON, the agreements with the Spanish Federation of Municipalities and Provinces, the occupational integration programmes of the Spanish Committee for Aid to Refugees (CEAR), etc.

1402. There are many bodies working with this group of persons to ensure coverage of their real needs. In 1998 the Ministry of Labour and Social Affairs allocated over 2 000 million pesetas to programmes for the benefit of refugees taken in by our country. Recently the Ministry signed a series of agreements with the Red Cross, CEAR and ACCEM (Spanish Catholic Migration Association) budgeted at over a billion pesetas.

1403. One example of this type of programme is the Foreign Children's Reception Home (CAME), a project developed in the Canaries by CEAR.

1404. The programme caters for all those minors coming mainly from the Sahara and the sub-Saharan area who, owing to a variety of circumstances, arrive in the Canaries with no means of support from their families or communities and nowhere to stay.

1405. This group consists of juveniles of both sexes who have no possibility of being reintegrated into their families and no alternative family ready to take them in permanently, and who exhibit no behavioural problems or physical or psychic disorders that would complicate life in a community. They have no knowledge of the Spanish language and culture, which means that they must learn Spanish if they are to be properly integrated. Often they are illiterate even in their own language, with the additional difficulties which that entails for them in the learning process. They invariably lack identity papers in Spain, which makes it impossible to provide them with occupational training under the rules, in view of the need for an invitation from the National Employment Institute.

1406. To provide schooling for such minors is practically impossible, handicapped as they are by lack of structured education. Though juveniles they are too old to be able to attend proper courses in the formal educational system, but too poorly trained to be able to attend classes with minors of their own age. Consequently, it is more effective for educational efforts to be directed towards professional training, so that social and occupational independence can be ensured in the future. Even so, the first step towards training of foreign juveniles must necessarily be education in Spanish language and culture, without which integration into society with some guarantee of success would be impossible. Consequently attendance at Spanish classes, taught by the educators of the home for juveniles, will be a priority activity from the very day of their admission to the centre.

1407. The period of stay for juvenile refugees is always until they reach their majority, provided that the minimum time spent working with a minor must be at least two years. In the view of the CEAR this is an adequate lapse of time in which to be able to equip the juvenile refugee with the social, personal and occupational skills that will be useful for ensuring his or her social and personal integration. In both eventualities exceptions will be allowed where minors are taken in by families, since one of the objectives of the project would thereby be covered.

1408. With regard to measures taken to trace the family and reunite its members, see, in addition to article 13 of Royal Decree 155/1996, the information supplied in chapter V.C.

1409. With regard to the information and training of officials, specific instruction is imparted to them by UNHCR and by the Office of Asylum and Refuge of the Ministry of the Interior.

2. Children in armed conflicts (art. 38), including physical and psychological recovery and social reintegration (art. 39) (CRC/C/58, paras. 123 to 131)

1410. Spain has not been directly involved in an armed conflict since the end of the civil war, in 1939.

1411. Further, Spain is a party to the Geneva Conventions of 12 August 1949, though it has not ratified the 1977 protocols additional thereto and relating to protection of the victims of international armed conflicts and protection of the victims of non-international armed conflicts respectively (see Annex E, chapter VIII, section A.2).

1412. In section I.A we cite the declarations framed by Spain when it ratified the Convention and expressing disagreement with the 15-year age limit.

1413. Under Spanish legislation the year of reference for the performance of military service is the year in which a person reaches the age of 19 years, though Spaniards can opt for earlier performance of military service and enlist in the armed forces from the time they reach majority. It is, moreover, clearly stipulated that in no case may national mobilization entail participation in armed conflict by anyone who has not fully attained the age of majority and also undergone prior military training.

1414. The possibility exists, in case of war or other public danger threatening the life of the nation, of derogation from certain international obligations in regard to human rights, and consequently suspension of some of those rights. Such a provision is embodied, for example, in article 4 of the International Covenant on Civil and Political Rights, in article 15 of the European Convention on Human Rights, or in article 30 of the European Social Charter. Nevertheless, all these provisions mention certain rights that may not be suspended even in emergency situations. These include what are designated the "hard core" of fundamental human rights: the right not be arbitrarily deprived of life, not to be subjected to torture or to inhuman or degrading treatment or punishment, not to be enslaved and not to be sentenced for acts or omissions that at the time they were committed did not constitute offences under national or international law.

1415. A concern of the international legal instruments to which Spain is a party in regard to armed conflicts is to ensure that the "hard core" of fundamental human rights is respected at all times during and after any armed conflict, and that suspensions of other rights on grounds of the war situation should be as few as possible and the reasons stated in all cases.

1416. With regard to measures for promoting physical and psychological recovery and social reintegration of child victims of armed conflicts, though indeed Spain has not ratified the protocols additional to the Geneva Conventions, in respect either of the general State administration, or of the Autonomous Communities and local administrations, or of the social organizations, temporary refuge programmes have been implemented for children affected by the armed conflict in former Yugoslavia.

1417. As stated in section 1 above, articles 14 and 15 of Royal Decree 155/1996 of 2 February approving the Regulations for the implementation of Organizational Act 7/1985 of 1 July on rights and freedoms of aliens in Spain refer to programmes of temporary admittance for foreign minors in Spain.

1418. For temporary admittance cases, the Interministerial Committee on Aliens has determined some criteria that must be observed in granting short-term visas, tailoring them to the situation of minors in difficulty who may require physical and psychological rehabilitation or social reintegration: minors admitted to refugee camps, minors who are orphaned or taken into guardianship centres abroad, minors affected by the Chernobyl nuclear disaster or minors from areas affected by armed conflicts.

1419. For the sound development of such programmes, the organizers are required to meet a number of requirements which ensure identification of the promoters and participants, the consent of those concerned, the suitability of receiving families, dissociation from plans for adoption, health coverage, coverage of economic needs, housing, maintenance and travel, etc.

Measures taken by welfare organizations

1420. One of the organizations of the Platform of Children's Organizations has developed a number of activities in this area.

(a) Preparation of a report entitled "Childhood and war" analysing the effects of armed conflicts on children;

(b) A travelling photographic exhibition entitled "Children of war", inaugurated on 20 November 1997. It contains 44 works by 10 of the most prominent press photographers. The exhibition is designed to show the effects of wars upon children.

(c) Spanish edition of the quarterly bulletin "Children of war", published in its original English version by Swedish Save the Children.

B. Children involved with the system of administration of juvenile justice (CRC/C/58, paras. 132 to 150)

1. Measures adopted by the State

1421. See also chapters III and IV of the report, concerning the general principles of the Convention and the rights and civil liberties guaranteed in the procedures followed in dealing with juvenile lawbreakers.

(a) Spanish Constitution

1422. The principle of legality is embodied in article 25.1 of the Spanish Constitution. Further, article 25.1 of the Criminal Code (Organization) Act proclaims the principle of penal legality, which guarantees juvenile offenders against punishment for any act or omission that was not characterized as a felony, misdemeanour or administrative offence in the legislation in force at the time.

1423. The Constitution also embodies rights relevant to the situation of such minors concerning effective judicial protection, namely: Right of access to the ordinary judge predetermined by law; to the defence and assistance of a lawyer; to be informed of the charges brought against them; to a public trial without undue delays and with full guarantees; to the use of the evidence pertinent to their defence; not to make self-incriminating statements; not to declare themselves guilty; and to the presumption of innocence.

(b) Organizational Act 4/1992 of 5 June amending the Act governing competence and procedure in the juvenile courts

1424. As already explained in the initial report of Spain (paragraphs 8 to 12, 83 and 318 to 322), Organizational Act 4/1992 of 5 June amending the Act governing competence and procedure in the juvenile courts brought about an essential reform in the procedure that was followed in the juvenile courts with regard to minors infringing the criminal law, and which had been declared unconstitutional by the Constitutional Court as not providing all the procedural guarantees required under the Constitution. Further, in the ruling that so determined (ruling 36/1991 of 14 February) mention was made of the principles enunciated in article 40 of the Convention.

1425. This reform spearheaded a global overhaul of the legal system concerning minors, on which work has been proceeding since then, and which is currently taking shape in the form of a draft organizational Act on the criminal responsibility of minors, now being debated in parliament, as mentioned in chapter I above.

1426. Until such time as this Act is passed, the Organizational Act governing competence and procedure in the juvenile courts, passed in 1948 and known, until it was amended by Fundamental Act 4/1992, as the Juvenile Courts Act, will remain in force.

1427. In April 1998 proceedings were initiated in the Constitutional Court on a question of unconstitutionality newly raised by a juvenile court with regard to the above-mentioned Juvenile Courts Act for possible infringement of article 24.2 of the Spanish Constitution and article 40.2 (b), subparagraph (i) of the Convention.

1428. Act 4/1992, as explained in paragraph 24 above of this report, established an age below which minors are not penally liable, namely 12 years. In such cases, they are to be referred to the services for protection of minors, for the adoption of any protective measure that might be necessary. For minors who are above that age, and until they have reached the age laid down in the Criminal Code, competence to prosecute them and, where appropriate, adopt measures of a re-educative nature lies with some specialized judicial bodies, the juvenile courts, and a special procedure is applied, with different features and different underlying principles from those determining the procedure for adults.

1429. As a precautionary measure, as soon as the possibility arises that the minor might be charged with an act that could be considered as an infringement of the penal law, the court, on application by the procurator, may order the minor to be detained in a custodial establishment, a measure to be maintained as long as necessary but which must be revised or confirmed after a lapse of not more than a month.

1430. Among the measures that can be applied by the juvenile court once the accused has been declared guilty is committal to an open, semi-open or custodial establishment. The duration of this measure may not exceed two years.

1431. The Act also allows the judge the possibility, in the minor's interest, of deciding that the sessions shall not be public. In addition, it specifies that the hearings must take place in a language that is clear and comprehensible to the minor.

1432. Further, once proceedings have been initiated but before the accused appears before the court, they may be brought to a close should the court so decide "considering the minor nature of the offence, the condition and circumstances of the juvenile concerned, the question of whether violence or intimidation was employed, or the fact that the juvenile has compensated or promised to compensate for the damage caused to the victim".

1433. In short, proceedings are instituted on the authority of the Government Procurator's office, which is guided by the principle of expediency. The continuation of the judicial process may thus be avoided, precedence being given to admission of responsibility by the young offender, resolution of the conflict and compensation of the victim over penal sanctions.

(c) Criminal Code

1434. As also noted in the above-cited paragraph 24, article 19 of the Criminal Code, adopted under Organizational Act 10/1995 of 23 November, raises the age of criminal responsibility to 18 years, the same as the age of civil majority.

1435. This same article 19 indicates that when a juvenile of that age commits an unlawful act he or she may be held responsible pursuant to the provisions of the Act governing the penal responsibility of minors. But as that specific Act did not exist at the time of the entry into force of the Criminal Code, the coming into force of article 19 is held in abeyance until such time as the Act governing the penal responsibility of juveniles becomes operative.

1436. Provisionally, pending the approval of the Act to govern the penal responsibility of minors, the competence of the juvenile courts, in proceedings conducted by reason of an offence or misdemeanour presumed to have been committed by someone under 18 years of age, extends to children aged more than 12 and less than 16 years. If those same acts are presumed to have been committed by a child over 16 years of age, the ordinary penal jurisdiction will take charge, and the technical staff at the service of the juvenile courts will then be called in to prepare a report on the juvenile's psychological, educational and family situation, on his or her social background and, in general, any other circumstances that may have contributed to the act of which the juvenile is accused.

1437. For the rest, it is the old Criminal Code which is applicable, superseded by the current Code except in regard to the treatment of persons under 18 years of age.

1438. Article 65 of the previous Criminal Code specifies that persons over 16 and under 18 years of age shall be subject to a penalty lighter by one or two degrees than prescribed by law, and that the court, in consideration of the juvenile's circumstances and of the act, may replace the sentence pronounced by detention in a special reformatory institution for an indefinite time, until the culprit's reform is achieved.

1439. Detention may not exceed the time that custodial punishment would have lasted if the person had been declared responsible, and to that effect the judge or court must specify that maximum limit in the sentence, it being understood that a person subjected to such a measure may not leave the establishment without the permission of the sentencing judge or court.

(d) Other provisions

1440. Article 5 of Act 4/1985 of 21 March, on passive extradition, specifies that extradition may be refused:

> "Where the wanted person is under 18 years of age at the time of the extradition request and is usually resident in Spain, or if it is thought that extradition may be an obstacle to the person's social rehabilitation..."

1441. Organizational Act 6/1984 of 24 May governs habeas corpus proceedings, whereby any person considering himself or herself to be illegally detained may obtain the right to be brought immediately before the court. The judicial decision under this procedure must be reached within the 24 hours following its initiation.

1442. The provisions guaranteeing procedural rights contained in the Spanish Constitution have been strengthened through the detailed guidelines for intervention set out in paragraph (c) of Directive 1/1993, dated 16 March, of the State Attorney General's Office on the role of the Government Procurator's Office in the procedure provided for in Act 4/1992 for the defence, legally entrusted to it under its fundamental statute, of the interests of juveniles. The directive sets out the criteria for deciding whether or not to proceed with a case in the light of a thorough evaluation of the personal and social situation of a juvenile offender.

1443. Further, article 2.3 of Royal Decree 155/1996 of 2 February, approving the regulations for implementation of Organizational Act 7/1985 of 1 July on rights and freedoms of aliens in Spain, expressly recognizes the entitlement of foreigners when in State territory to legal aid in case of detention, in the form of assigned counsel where appropriate, and to the assistance of an interpreter if they do not understand or speak Spanish, free of charge in case of indigence.

1444. Article 13 of the Royal Decree specifies that juveniles in a situation of unprotectedness may not be subjected to the expulsion measures provided for in the legislation on aliens. Again, article 108.8 of the Royal Decree provides that foreign juveniles may not be placed in internment centres for aliens, but must be placed at the disposal of the competent services for protection of juveniles, except where, subject to confirmation by the Government Procurator's Office, their parents or guardians have been placed in the same centre, they express a wish to remain together, and there exist modules to ensure that the family is accommodated as a unit and enjoys privacy.

1445. Articles 173 and following of Royal Decree 190/1996 of 9 February, approving the regulations for the implementation of the General Prison (Organization) Act (1/1979 of 26 September) establish the general principles for detention in departments for young persons under 21 years old (which includes juveniles aged between 16 and 18, if the court does not avail itself of the option indicated above) within penitentiary establishments.

1446. The organization of life in these departments should be marked by an intensive educational effort. The staff must direct their endeavours towards comprehensive training of the detainees, enhancing and developing their abilities through compensatory techniques which help them to develop their knowledge and capabilities, and thereby improve their chances of reintegration into society.

1447. Everything possible must be done to promote contact between detainees and their social milieu, making maximum use of existing resources and seeking to ensure the participation of community institutions in the life of the department.

1448. The necessary means must be made available to facilitate personalized educative care.

1449. The architectural and environmental conditions, the system of communal living and the organization of the life of the department must be designed to favour the development of programmes of training to make up for a defective education, occupational training, training for leisure and cultural activities, physical education and sports, psychological care and promotion of social integration.

(e) Draft Organizational Act on the penal responsibility of minors

1450. This draft Act is based on the following general principles:

(a) The non-penal but corrective and educative nature of the procedure and measures applicable to juvenile offenders, which should be oriented towards effective reintegration, with the overriding interests of the juvenile in mind;

(b) Express recognition of all the guarantees founded upon respect for constitutional rights and the special requirements imposed by the juvenile's interests;

(c) Differentiation for procedural and corrective purposes between various types within the category of juvenile offenders;

(d) Flexibility in the adoption and execution of the measures suggested by the circumstances of each specific case;

(e) Competence of the autonomous bodies for the protection of juveniles to implement the measures prescribed in the sentence;

(f) Judicial supervision of their implementation.

1451. The draft Act provides that where the perpetrator of the offence is less than 13 years old, he or she shall not be held responsible under the present law, but shall be subject to the measures provided for in the rules on protection of juveniles set out in the Civil Code and other provisions in force. Between that age and the age of 18 years, the Act of which we are considering the draft will be applied. From 18 years of age and up to 21 years, the Criminal Code is to be applied, though in specific cases, depending on the nature and gravity of the offence and the personal circumstances and degree of maturity of the perpetrator, one or another of the corrective and educative measures provided for in the preliminary draft may be applied.

1452. What is considered as a novelty, in relation to current legislation, is the introduction of a civil procedure for children who have reached 12 years of age and have committed serious offences, whereby the court of first instance competent in family matters, pursuant to the provisions of the Civil Code and the Civil Proceedings Act, may refer the juvenile for a programme of special education, with due follow-up of its development, for a period of one year.

1453. The draft Organizational Act also indicates that "persons to whom the present Act is applied shall enjoy all the rights recognized in the Constitution and in the legal order, particularly in Organizational Act 1/1996 of 15 January on the legal protection of minors and partial amendment of the Civil Code and the Civil Proceedings Act, as also in the Convention on the Rights of the Child, dated 20 November 1989, and in all the rules on protection of juveniles contained in the treaties validly adhered to by Spain".

1454. If the minor detained is a foreigner, the arrest is notified to the consular authorities whom it concerns. Any statement by the juvenile under arrest is made in the presence of his or her defending counsel and of those exercising parental authority, guardianship or effective custody, or failing that of a representative of the Government Procurator's Office. Article 17.1 of the draft Act, citing article 520 of the Criminal Proceedings Act, allows the detainee to exercise the "right to be assisted free of charge by an interpreter in the case of an alien who does not understand or does not speak Spanish".

1455. Competence to commit for trial lies with an ordinary court with the rank of Magistrate's and preferably specialist court. Moreover, the draft Act stipulates that the juvenile court, if the Government Procurator's Office so requests and states the reasons therefor, may declare the proceedings secret, in whole or in part, throughout the investigation or for part of its duration.

1456. Further, the draft Act provides that, once the completed examination proceedings have been forwarded by the Government Procurator's Office to the juvenile court, the latter will go ahead and open the trial proceedings, in which the juvenile will be assisted by counsel and may be accompanied by his or her legal representatives. Article 35.2 stipulates that the sessions of the hearing before the juvenile court shall not be public, and also prohibits the mass media from obtaining or disseminating pictures of the juvenile or data that would allow his or her identification. When the hearing is completed, the juvenile court must deliver its sentence within a maximum of three days. Article 39 cites the general requirements set out in the Judicial Power Organization Act for court sentences, adding expressly that "the [juvenile] court, in framing the sentence, shall take care to express its reasoning in a language that is clear and comprehensible for someone of the juvenile's age".

1457. The juvenile court, on application by the parties and after hearing the views of its own technical staff and of the competent public body of the Autonomous Community concerned, has broad powers allowing it, always with the juvenile's interests in mind, to suspend or replace by others the measures imposed, of course without detriment to the procedural safeguards, or allow the juvenile's parents to take part in the application and follow-up of those measures.

1458. The Government Procurator's Office occupies an important position in its dual capacity as an institution constitutionally entrusted with the function of promoting the enforcement of justice and the defence of the legal border, as also with the defence of the rights of juveniles and with looking after their interests. Likewise, defending counsel has a part to play in each and every phase of the proceedings, being informed at all times of the contents of the file, being empowered to present evidence and being involved in everything connected with the promotion of the juvenile's interests and the execution of the sentence, in which counsel is empowered to request changes.

1459. The draft Act establishes a system of procedural safeguards which, while guaranteeing that the imposition of the penalty will take place after the presumption of innocence has been overturned, ensures that due weight is given to the considerations of education and promotion of the juvenile's interests which should predominate in this process, and that at the same time flexible use is made of the principle of minimum intervention, in the sense of according importance to the possibilities of proceeding or not proceeding with the case, of compensation in advance or conciliation between the perpetrator and the victim, and of conditional suspension of the sentence imposed or its replacement by other measures during its execution.

1460. Article 55 of the draft Act embodies the principle of social rehabilitation, stipulating that all the activities of centres where custodial sentences are executed shall be subservient to the principle that the juvenile under detention is a subject at law and remains a member of society.

1461. The draft Act establishes a system for execution of measures calculated to facilitate the child's reintegration. Thus, in the first place, a wide choice of such measures is provided for: reprimand, community service, detention (closed, semi-open, open or therapeutic establishment, or attendance at a day centre), probation, ordinary or with intensive supervision, tasks to educate for life in society, ambulatory treatment, detention with tasks to perform at weekends, residence in a family or educative group, or forfeiture of moped licence.

1462. The draft Act also indicates that custodial measures, detention and measures of precautionary internment shall be executed at centres specifically for juvenile offenders, different from those intended for older persons of penal age.

1463. In the second place, the implementation system upholds the view that in the juvenile's interest, he or she must be attended to by specialists in the areas of education and training.

1464. Provision exists for dismissal of the case on grounds of conciliation between the offending juvenile and the victim or acceptance of the commitment to compensate for the damage caused or performance of the educational tasks, with the mediation of a technical team.

1465. Title VI of the draft Act establishes the conditions for challenging the legality of depriving juvenile offenders of their liberty, through the remedies of appeal and reconsideration.

1466. The sentence handed down by the juvenile court is subject to remedy of appeal before the juvenile division or section of the corresponding provincial tribunal or High Court of Justice, and the issue shall be settled after the holding of a public hearing that must be attended by the parties.

1467. Sentences handed down on appeal by the juvenile divisions of the High Courts of Justice are subject, where one of the measures referred to in rules 4 and 5 of article 9 of the draft Act has been imposed, to remedy of appeal to vacate the judgement for unification of doctrine before the second division of the Supreme Court.

2. Measures adopted by the Autonomous Communities

1468. Pursuant to the provisions of Organizational Act 4/1992 of 5 June amending the Juvenile Courts Act, the application of the measures of protection, detention or alternatives to detention ordered by the juvenile courts is the responsibility of the autonomous administrations.

1469. Custodial sentences are carried out at the administration's own centres or at privately-owned centres through contracts or agreements. Centres must have an educational plan and must respect juveniles' right to maintain contact with their families, subject to the limitations inherent in the organization of the centres and except where contacts have been prohibited by the judicial authorities.

1470. The Autonomous Communities conduct follow-up as and when required, monitor and supervise the conditions in which sentences are carried out, periodically reporting to courts and procurators and, if necessary, implement proposals for modification of the sentence, in the juvenile's interest, for the effective attainment of its re-educative objective.

1471. For juveniles held in custody, health care is administered at the centre itself and in the public health service network.

1472. The reports prepared by the technical units of the Autonomous Communities provide courts and procurators with guidance as to what measures might be most appropriate for each juvenile.

1473. The objective of re-education and social rehabilitation is achieved through:

(a) Supervised school work, aimed in some cases at the eradication of illiteracy and attainment of the necessary qualifications for occupational integration;

(b) Activities aimed at integration into society through involvement in community action carried out by public and private bodies;

(c) Activities for family integration, by promoting contacts between juvenile detainees and their families through visits and home leave and interviews between educators and parents;

(d) Occupational training activities through enrolment of juvenile detainees in practical courses in carpentry, mechanics, plumbing, electricity, the hotel trade, cooking, etc.;

(e) Occupational integration activities, directed towards finding employment;

(f) Programmes of disinstitutionalization for juveniles who have no families or whose families are not able to take charge of them. The programme covers job seeking, house hunting, granting of wage supplements and follow-up and support activities.

1474. Several Autonomous Communities refer to the difficulties encountered in caring for juvenile offenders. Among these are mentioned repetition of offences by certain categories of adolescent, often owing to the ineffectiveness of the measures taken with them, lack of human resources and installations for carrying out the measures ordered by the courts, the overcrowding at some centres which may make the process of rehabilitating juveniles difficult and even worsen their situation, and the predominance of custodial measures over measures to be carried out in open institutions. Alternatives to custodial measures, such as out-of-court redress or probation, are sometimes not applied owing to lack of adequate technical and human resources in the social services of the Autonomous Community. Detention in closed establishments very remote from the juvenile's domicile makes visiting difficult for families with very limited economic resources.

1475. There are several Autonomous Communities which have included in their legislation on children references to administrative action to cope with the situation in regard to juvenile offenders, taking into account their competence to execute judicial measures and the general requirements of promotion and protection of the rights of juveniles.

1476. The subjects dealt with in these enactments are concerned with the rights of juvenile detainees, the internal rules of the centres, including the disciplinary rules, or programmes of reintegration and social rehabilitation which supplement judicial measures and are to be considered as protective measures.

1477. In these provisions, the Autonomous Communities emphasize that in the choice of measures to be applied to juveniles everything possible must be done to avoid court proceedings and custodial measures are to be taken only as a last resort and for cases where it is strictly necessary.

1478. Among the measures proposed with a view to obviating criminal proceedings are out-of-court compensation for damage and conciliation.

1479. In working with minors in social conflict situations priority is to be given to preventive action, targeted to the risk factors that result in marginalization and delinquency, and promotion of activities conducive to social integration of juveniles.

1480. To that end, encouragement is to be given by the public system of social services to the work of street educators, family educators and such other services or benefits delivered by the system that support the care given in the juvenile's own environment.

1481. In this connection, we may cite article 9 of Act 10/1989 of 14 December on the protection of children, passed by Aragón; article 2 of Act 6/1995 of 21 March on procedures for the application of judicial measures to juvenile offenders, passed by the Balearics; article 78 of Act 1/1997 of 7 February on comprehensive care of juveniles, passed by the Canaries; article 3 of Decree 272/1990 of 20 December approving the statutes of centres and services, community-owned or collaborating, for protection, care and treatment of juveniles, issued by Castilla y León; the first additional provision of Act 37/1991 of 30 December on measures for the protection of abandoned children and on adoption, passed by Catalonia; article 37 of Act 3/1997 of 9 June on the family, children and adolescents, passed by Galicia; article 68 of Act 6/1995 of 2 August on safeguarding the rights of children and adolescents, passed by Madrid; articles 12 and 41 of Act 3/1995 of 21 March on children, passed by Murcia; and articles 29 and 30 of Act 7/1994 of 5 December on children, passed by Valencia.

1482. For information on child detainees and their rehabilitation, see sections III.B and V.H. Further to this information it should be noted that in our Spanish legal system there is no death penalty or life imprisonment, either for juveniles or for adults.

C. Children in situations of exploitation, including physical and psychological recovery and social reintegration

1. Economic exploitation of children, including child labour (art. 32) (CRC/C/58, paras. 151 to 154)

(a) Measures adopted by the State

1483. As already noted in chapter II above, in accordance with Royal Legislative Decree 1/1995 of 24 March approving the revised text of the Workers' Statute Act, the labour legislation provides that children under 16 years old cannot be hired for employment.

1484. Below that age the only exception envisaged is participation in public spectacles, which in exceptional cases may be authorized by the labour authorities, always provided that it does not involve danger to the child's physical health or professional and personal development.

1485. Workers under 18 years old may not do night work or overtime, nor may they perform tasks that have been declared unhealthy, heavy, harmful or dangerous either to their health or to their professional and personal development.

1486. Breach of the rules on employment of juveniles set out in the Workers' Statute is considered as a very severe offence and is punishable by a fine of between half a million and 15 million pesetas.

1487. Article 27 of Act 31/1995 of 8 November on prevention of occupational risks prescribes specific measures for the protection of juveniles in relation to occupational circumstances and conditions that may pose a risk to their health and safety.

1488. Prior to engaging persons under 18 years of age, the employer must evaluate the posts to be occupied by juveniles in order to identify the possible risks due in particular to the lack of experience, immaturity and still incomplete development of such workers. The employer must accordingly inform the juveniles concerned or their guardians of the existence of those risks and the measures adopted to protect their health and ensure their safety. To the same end, the Government may set limits to the hiring of juveniles for work that involves specific risks.

1489. In cases where the measures taken by the employer prove clearly inadequate to guarantee the health and safety of the workers, the latter, on their own behalf or through their representatives, may appeal to the labourer inspectorate, which, after an on-the-spot inspection, will decide on the employer's responsibility, normally leading to the infliction of a financial penalty; this penalty in no case absolves the employer from other forms of liability, for example in the civil courts for the damages caused or for the excess cost of any social security benefits that must be granted (typically in the case of an accident at work) owing to the employer's negligence.

1490. The last time the minimum guaranteed wage was adjusted by the Government, the distinction made until then between workers aged between 16 and 18 years and adults, whereby the former could legally receive a lower wage for identical work, was abolished.

1491. Article 13.2 of the Protection of Minors Act provides that:

> "any person or authority to whose knowledge it comes that a minor is not enrolled at school or is failing, habitually and without due cause, to attend school during the compulsory period, must bring it to the attention of the competent public authorities, who will take the necessary measures to ensure the minor's schooling",

it being understood that school absenteeism may in some cases be caused by or result in occupational exploitation.

1492. The new Criminal Code, while making no specific reference to child labour, deals with a number of offences against the rights of workers, and in particular penalizes anyone who, in breach of the rules on prevention of occupational risks, and being legally required to do so, does not provide the necessary means for employees to carry out their duties in conditions of safety and hygiene adequate for preventing serious risk to their lives, health or physical integrity. Annex B, chapter VIII, section C.1 enumerates the international instruments to which Spain is a party and which refer to child labour.

1493. With regard to child labour, other activities have also taken place:

(a) Participation in the drafting and discussion of the Convention being prepared by ILO on extreme forms of child labour, which will supplement Convention No. 138 concerning Minimum Age for Admission to Employment;

(b) Participation in the International Conference on Child Labour, held in Oslo in October 1997, which unanimously approved an Agenda for Action whose main objective is the effective elimination of child labour;

(c) In the area of international cooperation, as already stated in paragraph 20, Spain, through the Spanish Agency for International Cooperation, is contributing as second donor country in the amount of 12.5 million United States dollars to the International Programme on the Elimination of Child Labour (IPEC) in Latin America which is being implemented by ILO and is planned for a duration of five years, ending in 1999;

(d) Support for the Global March against Child Labour. The March was taking place in Spain from 3 to 17 May 1998, with two groups starting simultaneously from the extreme north and south of the peninsula. An agreement has been signed between the Ministry of Labour and Social Affairs and INTERMON, as coordinating organization for the Global March in Spain, for the implementation of various awareness-raising activities with financial participation;

(e) In connection with the March, the Ministry of Labour and Social Affairs organized a seminar on child labour, held on 29 and 30 April, to promote discussion and public awareness in view of the imminent adoption of the ILO Convention;

(f) Participation in a course organized by the Spanish Committee for UNICEF at the University of El Escorial on "Occupational exploitation of children: current situation, problems and plan of action";

(g) Under an agreement signed between the Ministry of Labour and Social Affairs and the Spanish Committee for UNICEF a study is being conducted on "Diagnosis concerning various types of exploitation of juveniles in Spain", with the aim of identifying the social realities and the problems faced with regard to the various forms, occupational and otherwise, of exploitation of juveniles and pooling ideas on how to solve those problems, in both the legislative and the social sphere.

1494. Since 1997 the Ministry of Labour and Social Affairs has been calling for financial contributions for the implementation of programmes aimed at preventing and eliminating child labour, through awareness-raising activities, detection of causative factors and prevention. Priority is being given to programmes that include a methodology for research and action, target as their beneficiaries those juveniles for whom, in view of their age, child labour is fraught with greater risk to their development, and centre their activities on the family.

1495. The publishing programme of the Ministry of Labour and Social Affairs features various publications on child labour for eventual dissemination and distribution, among them "Lo Primero en el Trabajo Infantil" (ILO-UNICEF).

(b) Measures adopted by the Autonomous Communities

1496. Several Autonomous Communities have given expression in their laws on children to the need to protect children from industrial and economic exploitation by using the powers they possess for the protection of juveniles, categorizing industrial exploitation, leading of minors into mendacity, delinquency or prostitution, or any other form of economic exploitation of juveniles, as a situation of unprotectedness, denial of protection or ill treatment.

1497. We may cite article 27 of Act 1/1998 20 April on the rights and care of juveniles, passed by Andalusia; article 31 of Act 1/1995 of 27 January on protection of juveniles, passed by Asturias; article 5 of Act 7/1995 of 21 March on custody and protection of abandoned children, passed by the Balearics; article 46 of Act 1/1997 of 7 February on comprehensive care of juveniles, passed by the Canaries; article 8 of Act 8/1995 of 27 July on care and protection of children and adolescents, passed by Catalonia; article 8 of Act 3/1997 of 9 June on the family, children and adolescents, passed by Galicia; and article 5.7 of Act 3/1995 of 21 March on children, passed by Murcia.

2. Drug abuse (art. 33) (CRC/C/58, paras. 155 to 157)

(a) Measures adopted by the State

(i) Criminal Code

1498. To protect children from the illicit use of narcotic drugs and psychotropic substances, the Criminal Code prescribes a heavier penalty for the offence of drug trafficking where it affects children. Thus under article 369.1 the penalty is increased when toxic drugs, narcotics or psychotropic substances are supplied to persons under 18 years of age, or are introduced or distributed at teaching or care centres.

1499. Under article 369.9 the penalty for the offence of drug trafficking is also increased when use is made of children under 16 years of age to commit such offences.

1500. The minimum penalty for involving a juvenile in drug trafficking is between three and four-and-a-half years' imprisonment in the case of "soft" drugs and between nine and 13 years' imprisonment where "hard" drugs are concerned. In both cases a fine is inflicted of up to four times the value of the drug. The same penalties are inflicted when the drugs are administered to juveniles.

(ii) Organizational Act

1501. According to article 11.2.d of the Protection of Minors Act, one of the guiding principles of administrative policy towards juveniles consists in "the prevention of all situations such as may jeopardize their personal development", as is the case with drug abuse.

(iii) Network of facilities

1502. In Spain there exists a whole network of care and rehabilitation facilities for coping with the problems resulting from drug consumption. These facilities vary widely in nature, reflecting the differing needs that drug addicts present and the strategies and programmes applied.

1503. Regarding social rehabilitation programmes, there is a variety of types including: general and occupational training programmes, occupational integration programmes, housing support programmes, day centres, etc.

1504. In Spain the incidence of drug dependence among persons under 18 years of age is low, so these facilities and programmes are used for the most part by adults of over 18. Nevertheless, both in the public network and in the private sector (often with public financing), steps are being taken to mobilize resources or implement programmes that specifically address the problem created by drug addiction in persons under 18 years old. In all these activities their families are wherever possible being involved in the work, in the interest of providing comprehensive care both to the individual affected and to the family as a corporate whole.

(iv) National Drug Plan

1505. Since 1985 Spain has had a National Drug Plan. Within this Plan are integrated structures belonging to the General State Administration, to the Autonomous Communities and also to non-governmental organizations working in this area. All these structures are powered and coordinated from the Government Delegation for the Plan, a body reporting to the Ministry of the Interior.

1506. All these institutions, public and private, are developing programmes and activities whereby society is made aware, sensitized and informed about these topics. These programmes range from information and prevention campaigns in the mass media to projects developed in specific territories.

1507. Evaluation studies on the effectiveness of this type of measure remain the least developed aspect of drug dependence policies. The reason for this has been the urgency of the needs of other areas, such as care or prevention. In latter years, however, some progress has been made in this regard, both at State level and at Autonomous Community, regional and local levels, through studies or polls specifically designed to evaluate the effectiveness of preventive campaigns or by means of surveys to evaluate the degree of awareness among young people of the dangers of consuming such substances.

1508. Since 1994 nation-wide biennial surveys have been conducted to determine the incidence of drug consumption among the juvenile population and gather information on other questions relating to drug consumption. To date, surveys have been conducted in 1994 and 1996. Both of them applied a common methodology, as will those to be conducted in the future, so that their findings can be comparable. The reference population in both cases consisted of students aged from 14 to 18 years in secondary education and occupational training, with a sample size of 20 000 students.

1509. As regards the progress achieved, over the last few years it has been possible:

(a) To establish organizational and coordination structures at all levels (State, Autonomous Community and local) for contending with the phenomenon of drug dependence;

(b) To achieve marked heightening of public awareness of the importance of this problem and, above all, involvement of society, through its various sectors and institutions, in the endeavour to solve it;

(c) To put into operation networks of facilities and programmes covering the areas of prevention, care and rehabilitation in regard to drug dependence;

(d) To enact regulatory statutes that are enabling the problems both of drug trafficking and of drug consumption to be more effectively tackled.

We must of course pursue these tasks in greater depth, improving on the one hand the arrangements for coordination between the various administrations and authorities involved, while also bringing home to society and especially to the sectors most affected the extent and importance of the phenomenon.

1510. Regarding the future, the Spanish government drew up in January 1997 a programme of measures for combating drugs, containing plans for action at various levels:

(a) Prevention: More emphasis on working with families, the educational community and the mass media;

(b) Care and rehabilitation: Improvement and diversification of the care system, with particular attention to the problems created by new substances (synthetic drugs) and new patterns of consumption (juvenile alcoholism);

(c) Control and suppression of trafficking: Improved coordination between the different police forces and reinforcement of the human and material resources put at their disposal;

(d) Legislation: Development of the legislative machinery with measures aimed at better protecting the health and well-being of the citizens, together with reinforcement of the legal instruments for combating drug trafficking;

(e) Research and documentation: Putting into operation of the Spanish Drug Monitoring Centre as a permanent body for collection and analysis of information on the drug dependence situation in Spain. The Spanish Centre belongs, together with the monitoring centres of the other European Union member States, to the European Information Network on Drugs and Drug Addiction, which in turn constitutes the working infrastructure of the European Observatory for Drugs and Drug Addiction.

1511. Annex B, chapter VIII, section C.2 contains an enumeration of the international conventions to which Spain is a party on drug abuse control.

(b) Measures taken by the Autonomous Communities

1512. See also of chapter VII.C for matters relating to consumption of alcohol and tobacco.

1513. A number of legislative Acts of the Autonomous Communities refer expressly to drug consumption and abuse.

1514. We may cite article 8 of Act 1/1998 of 20 April on rights and care of juveniles, passed by Andalusia; Act 5/1990 of 19 December on prohibition of the sale of alcoholic beverages to persons under 16 years of age; articles 30 to 38 of Act 1/1997 of 7 February on comprehensive care of juveniles, passed by the Canaries; Act 2/1995 of 2 March prohibiting the sale and advertising of alcoholic drinks to minors, passed by Castilla-La Mancha; Act 3/1994 of 29 March on drug dependent persons: prevention, care and social integration, passed by Castilla y León; articles 40, 42 and 52 of Act 8/1995 of 27 July on care and protection of children and adolescents, and Act 10/1991 of 10 May on prevention and care in regard to substances that may provoke dependence, passed by Catalonia; Act 4/1997 of 10 April on measures for prevention and control of sale and advertising of alcoholic beverages to juveniles, passed by Extremadura; Act 2/1996 of 8 May on drugs, passed by Galicia; articles 31 to 39 and 40 of Act 6/1995 of 28 March on safeguards for the rights of children and adolescents, passed by Madrid; Statutory Act 10/1991 of 16 March on prevention and limitation of the consumption of alcoholic beverages by juveniles, passed by Navarra; Act 15/1988 of 11 November, passed by the Basque country, on prevention of drug addiction and care and rehabilitation of addicts; and Act 3/1997 of 16 June on drug dependence, passed by Valencia.

1515. In addition, the 17 Autonomous Communities have their own Community drug plans, whose sphere of action includes:

(a) Prevention. Particularly important in this regard are the programmes for prevention among the school population through cooperation between the health and educational sectors. These programmes provide for training of teachers and parents as preventive agents and the systematic implementation of preventive activities in the classroom, especially for pupils aged between 10 and 16 years.

(b) Detection and taking in charge with the cooperation of self-help associations;

(c) Treatment at care centres and facilities. The resources for treatment of drug dependence may include ambulatory care units, hospital detoxification units, day units, therapeutic communities, support for self-help groups, support, guidance and advice for families, specific programmes for alcoholics in mental health facilities or specialized centres for ambulatory treatment of alcoholism and units for weaning and rehabilitation of alcoholics on a residential basis;

(d) Reintegration into society through classroom teaching and occupational training, social, occupational and housing support, and absorption into the labour market.

1516. Further, many Spanish municipalities (out of the over 8 000 that exist in the country) have their own municipal drug plans. Among the objectives of these plans we note:

(a) To reduce the usual level of exposure of children and adolescents to patterns of alcoholic-drink and tobacco consumption in their immediate environment;

(b) To raise the age of initiation into drug consumption in the child and adolescent population;

(c) To reduce excessive weekend alcohol consumption among young people;

(d) To reduce deaths from overdose and AIDS associated with consumption of illicit drugs, as also the incidence of the commonest communicable diseases that affect drug dependent persons;

(e) To enhance perception of risk and individual rejection of drug consumption;

(f) To reduce the number of traffic accidents associated with alcohol consumption.

1517. Many of these programmes, whether at Autonomous Community or municipal level, are faced with the difficulty resulting from low perception of risk and widespread social acceptance of consumption of alcohol and tobacco, which are the most widely consumed substances and those that cause the greatest social and health problems.

1518. Moreover, habitual consumption of tobacco is growing among young women, while at the same time the non-medical use of tranquillisers and occasional experimental consumption of cocaine is increasing among the general population. Probably, too, juvenile consumption of synthetic drugs is on the rise.

1519. In addition to the nation-wide surveys, a number of Autonomous Community and municipal drug plans have conducted studies or surveys on questions relating to drug consumption in their respective territorial areas. Some Autonomous Communities have drug abuse monitoring systems.

3. Sexual exploitation and sexual abuse (art. 34) (CRC/C/58, paras. 158 and 159)

(a) Measures adopted by the State

(i) Criminal Code

1520. The Spanish judicial and penal system protects juveniles against both sexual exploitation and sexual abuse, exploitation being understood to mean activities involving utilization of the juvenile in activities of a sexual nature against remuneration.

1521. As has already been pointed out in section I.B, in the analysis of legislation at State level, in chapter II and in section V.I, the new Criminal Code, approved by Organizational Act 10/1995 of 23 November, introduces new regulations on offences against the sexual freedom of individuals and establishes as basic categories of offence sexual aggression and sexual abuse.

1522. Sexual aggression is defined as any offence against the sexual freedom of an individual in which violence or intimidation is employed (article 178 of the Criminal Code). Accordingly, the subjection, through violence or intimidation, of a minor to any act of a sexual nature must be considered as a criminal act of sexual aggression.

1523. By sexual abuse is understood any conduct with a sexual content engaged in without violence or intimidation, and without consent on the part of the victim (article 161.1 of the Criminal Code).

1524. Acts of sexual aggression and abuse are punished more severely when there exist specific aggravating circumstances, as for example if the victim is especially vulnerable because of his or her age (articles 180.3 and 182, paragraph 2, subparagraphs 1 and 2 of the Criminal Code) or if the offence was committed by taking advantage of a kinship relation with the victim (article 180.4 of the Criminal Code).

1525. Acts of this nature constitute crimes of sexual abuse in all cases when committed with persons under 12 years of age, i.e. the granting of consent by persons under 12 years old is irrelevant to determining whether the crime of sexual abuse has been committed. For juveniles of above that age, free consent on their part to the performance of any sexual act is considered valid.

1526. Should the victim be over 12 and under 16 years of age, any person who has performed sexual acts with the adolescent is punished should deception have been practised for the performance of the acts (article 183 of the Criminal Code).

1527. The Supreme Court judgement of 14 May 1997 deemed this rule applicable to a case in which persons under the age of majority but older than 12 years went voluntarily to an adult's house where acts of a sexual nature agreed to by all of them were performed between them and with the accused, on the grounds that the children's consent had been obtained by deception.

1528. The conduct of anyone who sexually abuses another person, of whatever age, is punishable if consent was obtained by taking advantage of a position of superiority (paragraph 158.1) which restricts the victim's freedom (article 181.3). Since it appears easier to restrict the victim's freedom when he or she is a minor, this rule makes it possible to punish some acts which in the previous Criminal Code were considered as "corruption of minors".

1529. The Supreme Court judgements of 16 December 1996, 27 February 1997 and 26 March 1997 categorize as sexual abuse from a position of advantage acts of a sexual nature performed, without violence or intimidation, on persons of less than 18 and more than 12 years of age, with their consent, by members of the victims' families (judgements of 16 December 1996 and 27 February 1997 cited above) or by persons not belonging to the family but substantially older than the juvenile (judgement of January 1997).

1530. In so far, however, as there is no position of advantage, persons who agree to give money to juveniles for sexual favours cannot be punished if the offer is made and the price fixed by the latter.

1531. Where there is no deception or position of superiority, the effect of the granting of consent by the juvenile is that no offence is committed.

1532. The Criminal Code also penalizes acts of sexual harassment, by which is meant merely requesting favours of a sexual nature on the strength of a position of superiority in an employment, teaching or other such situation (article 184). This rule, generic in nature in that it protects the sexual freedom of all individuals, also protects the sexual freedom of those under 18 years of age.

1533. A specific provision on this subject for juveniles is contained in article 444.1 of the Criminal Code, which penalizes officials of centres for protection or punishment of juveniles who make sexual advances to anyone under their care.

1534. A new offence is created, namely utilization of juveniles in exhibitionist or pornographic spectacles.

1535. Article 189.1 of the Criminal Code penalizes utilization of juveniles in or for exhibitionist or pornographic spectacles performed live, though it does not punish anyone for attending such spectacles. Under this article, persons who utilize juveniles in the production of pornographic materials can be punished, but the possession and dissemination of that pornographic material is not punishable.

1536. Prostitution as such, in the sense of "sexual intercourse, with anyone who asks for it, for remuneration", does not constitute an offence, i.e. neither the person who engages for money in activities of a sexual nature with the person so requesting, nor the person who pays for those activities, is punished. However, Spanish criminal legislation protects the sexual freedom of adults by penalizing certain conducts that involve retaining any person in the practice of prostitution against his or her will (article 118 of the Criminal Code).

1537. With regard to prostitution of minors, the law penalizes the conduct of anyone who induces, promotes, encourages or facilitates prostitution with persons under 18 years old (article 187.1 of the Criminal Code) or anyone who forces a minor to live as a prostitute (article 188.3 of the Criminal Code). It does not, on the other hand, explicitly penalize sexual relations with a minor who practices prostitution, though that can be punished as an act of sexual abuse if the necessary circumstances obtained (in the case of a child under 12 years old or, in that of an older person, if the consent given is invalid).

1538. Traditionally the Spanish Supreme Court has held that the conduct of the client does not constitute a prostitution-related offence. This judicial practice, confirmed by a Supreme Court judgement of 12 January 1998, results in impunity for the client of any juvenile who practices as a prostitute. On the other hand, as recognized in the judgement of 12 January 1998, if the juvenile is not a practising prostitute the fact of paying him or her for engaging in sexual intercourse would constitute an inducement to prostitution, and as such punishable under article 187.1 of the Criminal Code.

1539. Likewise, article 188.3 of the Criminal Code prescribes penalties for where the juvenile does not submit voluntarily to prostitution. This article penalizes anyone who, by violence, deception or abuse of a state of need or position of superiority, induces a minor to practice or continue practising prostitution. Under this article, again, the person who pays the minor to practice prostitution cannot be punished if that practice was voluntarily adopted by the juvenile.

1540. Some of these hypothetical cases can be assimilated to acts of sexual abuse by exploiting an advantage, but not all of them. Thus, for example, the conduct of persons who pay a juvenile to engage in sexual relations with them cannot be considered as abuse by exploitation of advantage if the juvenile is a practising prostitute and was the one who offered himself or herself to the adult and fixed the price.

1541. The law penalizes the conduct of anyone who, being responsible for a minor and knowing the latter is living as a prostitute, does not do everything possible to prevent the continuation of the situation or does not approach the authorities for help in that regard. In such a case it is the responsibility of the Government Procurator's Office to take appropriate steps with a view to divesting that person of parental authority or such other capacity as vested him or her with responsibility for care of the juvenile.

1542. For proceedings to be taken against offences of sexual aggression and abuse involving juveniles the only requirement is a complaint to the Government Procurator's Office, which need not come from the injured party or his or her legal representative.

1543. Article 192.1 of the Criminal Code prescribes heavier penalties when the perpetrators of or accomplices in such offences against sexual freedom are ascendants, guardians, protectors, teachers or any other person with de facto or de jure charge of the juvenile. Further, the court may impose the penalty of specific disqualification for the exercise of parental authority, guardianship, custody, or employment or profession.

1544. The principle of extraterritoriality, whereby sexual exploitation of children by Spanish nationals and persons resident in Spain can be characterized as an offence when they operate in third countries, is embodied in article 190 of the Criminal Code, which provides that sentences passed by foreign judges or courts shall have equal force with the sentences of Spanish judges or courts where prostitution-related offences are concerned and for taking into account the aggravating circumstance of repetition of the offence.

1545. Articles 4 (e) and 5 of the Judicial Power Organization Act provide that the Spanish courts shall be competent to try offences characterized as prostitution-related according to Spanish law and committed by Spaniards or aliens outside the national territory if the perpetrator has not been acquitted, pardoned or sentenced abroad and, in this last eventuality, has not completed the sentence.

1546. At the time of preparation of this report the Cortes Generales were debating a draft law to amend the Criminal Code in regard to offences against sexual freedom. The principal changes proposed in this draft are as follows:

(a) The penalties for offences against sexual freedom are in general made more severe.

(b) The principle of extraterritoriality is extended so that Spanish courts will also be able to try offences relating to prostitution and corruption of juveniles committed by Spaniards or aliens outside the national territory, so it will be possible to use the weapons of penal law to combat the phenomenon of sexual tourism.

(c) Penalties are introduced for trafficking in persons for purposes of sexual exploitation, moving into or out of the national territory.

(d) The draft law raises to 13 years the age below which no account is taken of any consent given to the performance of acts with a sexual content, which accordingly constitute in all cases crimes of sexual abuse. The age is also raised to 15 years for sexual relations between an adolescent of between 13 and 15 years and a person over 18 years old, in which situation the latter would always be considered to have committed an act of sexual abuse.

(e) The age of full sexual majority is set at 15 years, juveniles being considered from then on as having capacity to engage in any activity of a sexual nature that they may choose, with the person of their choice, whatever that person's age, and whatever the motive provided it is not financial. The age of penal majority for the practice of prostitution is established at 18 years, so the handing over to a juvenile of between 15 and 18 years of a sum of money for the performance of acts of a sexual nature would be punishable even if it has been agreed to or proposed by the juvenile.

(f) An age of relative sexual majority is set at 13 years, from when onwards sexual relations are considered lawful between persons of like age, though not with persons aged 18 years or more.

(g) Penalties are prescribed for utilization of juveniles to produce pornographic material, as also for the production, sale, distribution or exhibition of such material. Possession thereof is also covered in the draft law.

(h) Attendance at pornographic spectacles in which juveniles are used is also made punishable.

(i) For offences against sexual freedom in which the victim is a minor, the time limit for prescription is counted from when that person reaches the age of majority.

(j) The draft law provides for reintroducing into our judicial system the offence of corruption of minors, punishable under the now superseded Criminal Code of 1973, in which acts of corruption were defined as "acts aimed at initiating minors or incompetents into, or maintaining them in, a precocious or premature sexual life, as also acts of a sexual nature whose intensity, persistence and continuity may impair the normal process of formation or development of their personalities".

(ii) Act 35/1995

1547. Act 35/1995 of 11 December on assistance to and care of victims of violent crimes and crimes against sexual freedom, with the Regulations approved by Royal Decree 738/1997 of 23 May, establishes a system of public assistance designed for victims of crimes resulting in death, grievous bodily harm or serious damage to health, and for their families. In addition to providing financial aid, the plans provide for setting up offices for assistance to victims in the precincts of the courts and Procurators' Offices, to provide them with the psychological and social care that they need.

(iii) Non-legislative proposal no sexual exploitation

1548. The Spanish Congress of Deputies, at its plenary session of 6 May 1997, adopted a non-legislative proposal on sexual exploitation of children and agreed to urge the government:

> "To continue and encourage cooperation within the European Union with the aim of putting to an end the sexual exploitation of children (...), ensuring the application of the recommendations of the Stockholm Congress (...), intensifying police and judicial cooperation within the European Union in the fight against sexual exploitation of children (...), to approve the regulations for the implementation of Act 35/1995 of 11 December on assistance to and care of victims of violent crimes and crimes against sexual freedom and give specific consideration therein to the situation of minors subjected to this type of conduct (...), to install offices for assistance to the victims in courts, tribunals and Procurators' Offices where the needs so indicate and provide them with staff specialized in care of juveniles (...), to publicize the content of the joint action programme of the European Union, of 29 November 1996 (...), to promote, through agreements with the municipalities and Autonomous Communities, programmes aimed at detecting and intervening in cases of sexual exploitation of juveniles and at treatment of the victims (...), to continue efforts to ensure the presence in all provinces of national police corps personnel specially trained for working with juveniles who undergo sexual abuse and exploitation ..."

(iv) Agreements and international cooperation

1549. Spain took part in the World Congress held in Stockholm in 1996 and subscribed to the Declaration and Agenda for Action against the Sexual-Commercial Exploitation of Children.

(v) Role of the police

1550. Special units known as Juveniles' Groups have been established within the police force to combat this kind of crime and experts in every variety of discipline have taught in training courses designed for police personnel. Aims include extension of the Juveniles' Groups to all the provincial capitals and participation by personnel in meetings, conferences and training seminars for the national police and also the Autonomous Community and regional police forces, taught by police specialized in these subjects and by experts in the relevant areas (psychology, sociology, law, etc.).

1551. The autonomous police of Catalonia, the Mossos d'Esquadra, have a Juveniles' Police Command which covers the entire Catalan territory, with a number of area sectors. Their spheres of competence are those assigned to them by the legislation in force, they have offices of their own for the population sector to which they are assigned, and they have undergone specific training. Dealing with the problem of sexual exploitation or abuse of children forms part of their duties.

1552. The Autonomous Community of the Canaries has set up the special unit called the Juveniles' Group of the General Directorate of National Police, and a juveniles' section in the Office for Crime Victims, to deal with the problems of children subjected to sexual exploitation or abuse, who are looked after there by psychologists and lawyers specialized in this field.

1553. The Spanish police participate in permanent working groups, reporting to Interpol, on crimes to which juveniles fall victim, especially child prostitution and pornography. Formal relations have been established with Europol for the tracking of offences against juveniles, especially with the advent of the Internet web, and Spain is participating in the programmes conducted by Sweden to establish picture libraries of victims and aggressors in child pornography.

(vi) Experimental programmes on ill traitment

1554. Chapter V.I made reference to these programmes, some of which are relevant to sexual abuse.

(vii) Education and awareness-promotion

1555. In October 1996 there was held in Madrid a seminar on "The sexual-commercial exploitation of children after the Stockholm Congress", organized by the Office for Social Action, Children and the Family for the purpose of studying and publicizing the Declaration and Agenda for Action adopted at the Stockholm Congress, situating it in the Spanish context and determining strategies for awakening public awareness regarding the nature of the problem. It was attended by NGOs such as End Child Prostitution in Asian Tourism (ECPAT) and other members of the Platform of Children's Organizations.

(viii) Studies, research and publications

1556. In line with the views set out in the introduction to this second report, and in the context of technical cooperation, the Office for Social Action, Children and the Family has over these latter years been promoting a policy of research and public information relevant to this area.

1557. See Annex A, tables 1.1 and 1.2.

(b) Measures adopted by the Autonomous Communities

1558. The Autonomous Community legislation referred to in paragraph 12.2 of this second report and in many subsequent paragraphs regards sexual abuse as a situation of unprotectedness and ill treatment of children which must be given corresponding attention and care on the part of the administration in the terms set out in chapter V.

1559. In accordance with this policy position, in many Autonomous Communities specific programmes and services have been created for the care of juvenile victims of sexual abuse.

1560. See also section 1.G on the Child Welfare Plans of the Autonomous Communities.

(c) Measures taken by social organizations

1561. One of the organizations of the Platform of Children's Organizations, in cooperation with Swedish Save the Children, held in Madrid on 7 November 1996 a Symposium on "Follow-up of European policies on sexual abuse and prostitution of children: rehabilitation and prevention", for the purpose of analysing and studying the follow-up to the implementation of the Agenda for Action adopted at the Stockholm Congress, studying European policies for combating sexual abuse and prostitution of children, and planning activities for prevention and for the rehabilitation of child victims of sexual abuse.

1562. During the year 1997 this same organization has been working on the design of a programme of sensitization to and prevention of sexual abuse, targeted to professionals concerned with children in the areas of education, health care, social services and administration of justice. This programme, which is being implemented throughout the year 1998, aims at:

(a) Training professionals to provide an appropriate response to the need for detection and reporting of cases of abuse;

(b) Developing preventive programmes targeted to children and to the general population;

(c) Training potential trainers for the general adoption of appropriate practices in the prevention of sexual abuse, its detection and the treatment of victims.

4. Sale, trafficking and abduction (art. 35) (CRC/C/58, paras. 160 to 162)

1563. See also section V.G (International adoption) and sections A.1 and A.2 of this chapter.

1564. The Spanish system of criminal law penalizes as an offence the handing over - even if it takes place abroad - against pecuniary payment of a son or daughter, descendant or any juvenile for the purpose of establishing a relationship analogous to that of parent and child. Also subject to punishment are the receiving party and the intermediary in the transaction.

1565. As regards the effective protection of children against illegal detention or abduction, the provisions are the same as for the protection of adults (articles 163 to 168 of the Criminal Code) though heavier penalties are prescribed for such offences when the victim is a juvenile (article 165 of the Criminal Code).

1566. In current Spanish criminal legislation there exists no offence designated as "traffic in children" whatever may be the purpose of such conduct. The draft Criminal Code Amendment Act does, however, contain a specific provision regarding international trafficking in children for the purpose of prostituting them (see section C.3).

1567. Spain has signed agreements for preventing sale or abduction of and trafficking in children, in particular in the sphere of international cooperation between judicial authorities and the forces of law and order:

(a) Convention on the Civil Aspects of International Child Abduction, of 25 October 1980, drawn up at the Hague Conference on Private International Law;

(b) European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, of 20 May 1980, adopted in the Council of Europe;

(c) Bilateral Convention with Morocco on legal aid, recognition and implementation of judicial decisions in regard to right of custody and right of access and transfer of minors, of 30 May 1997;

(d) Exchange of Memoranda with the United Kingdom concerning article 24 of the Hague Convention of 25 October 1980 on the civil aspects of international abduction of minors, of 22 July 1991.

5. Other forms of exploitation (art. 36) (CRC/C/58, paras. 163 and 164)

(a) Measures adopted by the State

1568. In section C.1, in connection with the occupational exploitation of children, reference was made to the participation of children in spectacles. Though employment of persons under 16 years of age is not permitted, the Workers' Statute provides that, exceptionally, it may be authorized in the context of the special employment relationship of performers in public spectacles.

1569. This necessitates an express authorization from the labour authority, which may exceptionally be granted provided that the said participation does not involve danger to the juvenile's physical health or professional and personal development. Royal Decree 1435/1985 which regulates the matter, provides that the authorization must be requested by the legal representatives of the juvenile, whose consent must accompany the application, should he or she be competent to give it, and the granting of the authorization must be recorded in writing, specifying the spectacle or activity for which it is granted. The scope of this special employment relationship includes the performance of artistic activities carried out directly before the public in settings such as the theatre, cinema, broadcasting, television, bullrings, sports grounds, circus or dance hall, or intended to be recorded in some way for distribution to the public.

1570. Regarding participation of juveniles in advertising, Act 21/1994 of 12 July, on television, stipulates that television advertising must not directly incite such juveniles to buy a product or a service by exploiting their lack of experience or their credulity, nor to persuade their parents or guardians, or the parents or guardians of third parties, to purchase the products or services concerned, and must not exploit the special trust that children place in their parents, teachers or other persons. Some Autonomous Communities include in their legislation on children rules dealing with the utilization of juveniles in advertising material that circulates within their territorial area.

1571. Concern about the exploitation of pictures of juveniles, especially those who have been prominently involved in events that have shocked public opinion or alarmed society, through the communication media was a major consideration in the drafting of article 4.2 of the Protection of Minors Act (see section IV.F).

1572. Regarding possible exploitation of children through their utilization in medical experiments, see chapter II.

(b) Measures adopted by the Autonomous Communities

1573. Some legislation passed by the Autonomous Communities provides specifically for protective action in this regard (see also section VIII.C).

D. Children belonging to minorities (art. 30)
(CRC/C/58, paras. 165 and 166)

1574. See also chapter III.A.

1575. The Preamble to the Spanish Constitution proclaims the desire to protect all Spaniards and peoples of Spain in the exercise of human rights, of their cultures and traditions, and of their languages and institutions. Article 3.3 states that the wealth of different linguistic patterns in Spain is a cultural heritage that will be accorded particular respect and protection. Article 16 guarantees freedom of ideology, religion and worship for individuals and communities with no other restriction on their expression than may be necessary to maintain public order as protected by law.

1576. In Spain, as a secular State, all religions enjoy freedom.

1577. With regard to the Gypsy minority, see section I.J for the Gypsy Development Plan.